No. 7812

In the United States Circuit Court of Appeals

For the Ninth Circuit.

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation,

Complainant,

vs.

RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation,

Defendant.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, as Trustee, GEORGE ARMSBY, F. S. BAER, HARRY J. BAUER, STANTON GRIFFIS, ROBERT E. HUNTER and ALBERT E. VAN COURT, known and designated as Richfield Bondholders' Committee,

Appellants and Cross-Appellees,

vs.

UNIVERSAL CONSOLIDATED OIL COMPANY, a California corporation,

Intervenor, Appellee and Cross-Appellant.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, BANK OF AMERICA, a corporation, PAN AMERICAN PETROLEUM COMPANY, a corporation, WILLIAM C. McDUFFIE, as Receiver for Pan American Petroleum Company, a corporation, RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, UNITED STATES OF AMERICA, THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation, CITIES SERVICE COMPANY, a corporation, ROBERT C. ADAMS, THOMAS B. EASTLAND, EDWARD F. HAYES and RICHARD

(Continued on Inside Cover.)

Transcript of Record.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Parker, Stone & Baird Co., Law Printers, Los Angeles.

W. MILLAR, known and designated as Pan American Bondholders' Committee, G. PARKER TOMS, ROBERT C. ADAMS, F. S. BAER, ROBERT E. HUNTER, HENRY S. McKEE and RICHARD W. MILLAR, known and designated as Richfield Pan American Reorganization Committee, WILLIAM C. McDUFFIE, as Receiver of Richfield Oil Company of California, SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, PACIFIC AMERICAN COMPANY, a corporation, AMERICAN COMPANY, a corporation, MANUFACTURERS TRUST COMPANY OF NEW YORK, a corporation, CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES, a national banking association, FIRST NATIONAL BANK AND TRUST COMPANY OF SEATTLE, a national banking association, CONTINENTAL ILLINOIS BANK AND TRUST COMPANY, a corporation, THE FIRST NATIONAL BANK OF CHICAGO, a national banking association, CHEMICAL NATIONAL BANK AND TRUST COMPANY, a national banking association, and CALIFORNIA BANK, a corporation, M. W. LOWERY, HENRY S. McKEE, O. C. FIELD, R. R. TEMPLETON, known and designated as Richfield Unsecured Creditors' Committee,

Appellees.

No.

In the United States Circuit Court of Appeals For the Ninth Circuit.

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation,

Complainant,

vs.

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Defendant.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, as Trustee, GEORGE ARMSBY, F. S. BAER, HARRY J. BAUER, STANTON GRIFFIS, ROBERT E. HUNTER and ALBERT E. VAN COURT, known and designated as Richfield Bondholders' Committee,

Appellants and Cross-Appellants,

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UNIVERSAL CONSOLIDATED OIL COMPANY, a California corporation,

Intervenor, Appellee and Cross-Appellant.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, BANK OF AMERICA, a corporation, PAN AMERICAN PETROLEUM COMPANY, a corporation, WILLIAM C. McDUFFIE, as Receiver for Pan American Petroleum Company, a corporation, RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, UNITED STATES OF AMERICA, THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation, CITIES SERVICE COMPANY, a corporation, ROBERT C. ADAMS, THOMAS B. EASTLAND, EDWARD F. HAYES and RICHARD

(Continued on following page.)

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Appellees.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation, Complainant, vs. RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, Defendant.	
SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, as trustee, Plaintiff, vs. RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, and WILLIAM McDUFFIE, as Receiver of Richfield Oil Company of California, a corporation, Defendants.	IN EQUITY CONSOLIDATED CAUSE NO. S-125-J CITATION ON APPEAL.

)
UNIVERSAL CONSOLIDATED)
OIL COMPANY, a California cor-)
poration,)
Intervenor.)
)

UNITED STATES OF AMERICA)
(SS.
NINTH JUDICIAL CIRCUIT)

To The Chase National Bank of the City of New York, a national banking association, Bank of America, a corporation, Pan American Petroleum Company, a corporation, William C. McDuffie, as Receiver of Richfield Oil Company of California, a corporation, William C. McDuffie, as Receiver of Pan American Petroleum Company, a corporation, Richfield Oil Company of California, a corporation, The United States of America, The Republic Supply Company of California, a corporation, Cities Service Company, a corporation, Universal Consolidated Oil Company, a corporation, M. W. Lowery, Henry S. McKee, O. C. Field and R. R. Templeton (known and designated as Richfield Unsecured Creditors' Committee), Robert C. Adams, Thomas B. Eastland, Edward F. Hayes and Richard W. Millar (known and designated as Pan American Bondholders' Committee), G. Parker Toms, Robert C. Adams, F. S. Baer, Robert E. Hunter, Henry S. McKee and Richard W. Millar (known and designated as Richfield-Pan American Reorganization Committee), Security-First National Bank of Los Angeles, a national

banking association, Pacific American Company, a corporation, American Company, a corporation, Manufacturers Trust Company of New York, a corporation, Citizens National Trust & Savings Bank of Los Angeles, a national banking association, First National Bank and Trust Company of Seattle, a national banking association, Continental Illinois Bank and Trust Company, a corporation, The First National Bank of Chicago, a national banking association, Chemical National Bank and Trust Company, a national banking association, and California Bank, a corporation, appellees, GREETING:

You, and each of you, are hereby cited and admonished to appear at a Session of the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, State of California, in said Circuit within thirty (30) days of the date of this writ, pursuant to an order filed in the office of the Clerk of the United States District Court for the Southern District of California, Central Division, allowing an appeal by Security-First National Bank of Los Angeles, a national banking association, as trustee, plaintiff herein, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein referred to constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners herein, petitioners and appellants in the above entitled cause (designated as In Equity, Consolidated Cause No. S-125-J), from that

certain order, judgment and decree made and entered by said United States District Court in said cause on September 17, 1934, adjudicating each, all and sundry the exceptions filed to the Report of the Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which Report was filed on May 26, 1933, in which appeal you, the parties first above mentioned, are appellees, and the said Security-First National Bank of Los Angeles, a national banking association, as trustee, plaintiff herein, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein referred to constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners herein, are appellants, to show cause, if any there be, why said order, Judgment and decree of said United States District Court above mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable William P. James, United States District Judge of the Southern District of California, Ninth Judicial Circuit, this 17 day of December. 1934.

Wm. P. James
United States District Judge.

[Endorsed]: Filed Dec. 31, 1934. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk.

[Title of Court and Cause.]

ACKNOWLEDGMENT OF SERVICE OF CITATION ON APPEAL AND ASSIGNMENT OF ERRORS

Due service and receipt of the copy of Citation on Appeal and the Assignment of Errors, copies of which are attached hereto marked Exhibits A and B, respectively, are acknowledged by the undersigned on the dates set opposite their respective names.

Mudge, Stern, Williams & Tucker,
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[Endorsed]: Filed Dec. 31, 1934. R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation,

Complainant,

vs.

RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation,

Defendant.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, as trustee,

Plaintiff,

vs.

RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, and WILLIAM McDUFFIE, as Receiver of Richfield Oil Company of California, a corporation,

Defendants.

IN EQUITY

CONSOLIDATED CAUSE NO. S-125-J

CITATION ON APPEAL

(Order of September 26, 1934)

UNIVERSAL CONSOLIDATED)
OIL COMPANY, a California cor-)
poration,)
Intervenor.)

UNITED STATES OF AMERICA)
) SS.
NINTH JUDICIAL CIRCUIT)

To The Chase National Bank of the City of New York, a national banking association, Bank of America, a corporation, Pan American Petroleum Company, a corporation, William C. McDuffie, as Receiver of Richfield Oil Company of California, a corporation, William C. McDuffie, as Receiver of Pan American Petroleum Company, a corporation, Richfield Oil Company of California, a corporation, The United States of America, The Republic Supply Company of California, a corporation, Cities Service Company, a corporation, Universal Consolidated Oil Company, a corporation, M. W. Lowery, Henry S. McKee, O. C. Field and R. R. Templeton (known and designated as Richfield Unsecured Creditors' Committee), Robert C. Adams, Thomas B. Eastland, Edward F. Hayes and Richard W. Millar (known and designated as Pan American Bondholders' Committee), G. Parker Toms, Robert C. Adams, F. S. Baer, Robert E. Hunter, Henry S. McKee and Richard W. Millar (known and designated as Richfield-Pan American Reorganization Committee), Security-First National Bank of Los Angeles, a national banking association, Pacific American Company, a corporation, American Company, a corporation, Manufac-

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You, and each of you, are hereby cited and admonished to appear at a Session of the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, State of California, in said Circuit within thirty (30) days of the date of this writ, pursuant to an order filed in the office of the Clerk of the United States District Court for the Southern District of California, Central Division, allowing an appeal by Security-First National Bank of Los Angeles, a national banking association, as trustee, plaintiff herein, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners herein, petitioners and appellants in the above entitled cause (designated as In Equity, Consolidated Cause No. S-125-J), from that certain order, judgment and decree made and entered by said United States District Court in said cause on September 26, 1934, adjudicating each, all and sundry the exceptions filed to

the Report of the Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which Report was filed on May 26, 1933, in which appeal you, the parties first above mentioned, are appellees, and the said Security-First National Bank of Los Angeles, a national banking association, as trustee, plaintiff herein, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein referred to constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners herein, are appellants, to show cause, if any there be, why said order, judgment and decree of said United States District Court above mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable William P. James, United States District Judge of the Southern District of California, Ninth Judicial Circuit, this 26th day of December, 1934.

Wm. P. James
United States District Judge.

[Endorsed]: Filed Jan. 10, 1935. R. S. Zimmerman, Clerk By L. Wayne Thomas, Deputy Clerk.

[Title of Court and Cause.]

ACKNOWLEDGMENT OF SERVICE OF CITATION ON APPEAL AND ASSIGNMENT OF ERRORS.

(Order of September 26, 1934)

Due service and receipt of the copy of Citation on Appeal and the Assignment of Errors, copies of which are attached hereto marked Exhibits A and B, respectively, are acknowledged by the undersigned on the dates set opposite their respective names.

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Los Angeles, California.

Jan. 4th, 1935. By Leo S. Chandler

As attorneys of record for G. Parker Toms, Robert C. Adams, F. S. Baer, Robert E. Hunter, Henry S. McKee and Richard W. Millar (known and designated as Richfield Pan American Reorganization Committee)

Call & Murphey,
514 Pacific Mutual Building,
Los Angeles, California.

Jan. 4, 1935. By Call & Murphey L. R.

As attorneys of record for Security-First National Bank of Los Angeles, a national banking association Pacific American Company, a corporation, American Company, a corporation, Manufacturers Trust Company of New York, a corporation, Citizens National Trust & Savings Bank of Los Angeles, a national banking association, First National Bank and Trust Company of Seattle, a national banking association, Continental Illinois Bank and Trust Company, a corporation, The First National Bank of Chicago, a national banking association, Chemical National Bank and Trust Company, a national banking association, and California Bank, a corporation.

[Endorsed]: Filed Jan. 10, 1935. R. S. Zimmerman Clerk By L. Wayne Thomas, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION.

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation, Complainant, vs. RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, Defendant.	
SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, as trustee, Plaintiff, vs. RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, and WILLIAM McDUFFIE, as Receiver of Richfield Oil Company of California, a corporation, Defendants.	IN EQUITY CONSOLIDATED CAUSE NO. S-125-J. CITATION ON APPEAL
UNIVERSAL CONSOLIDATED OIL COMPANY, a California corporation, Intervenor.	

UNITED STATES OF AMERICA,)
) SS.
NINTH JUDICIAL CIRCUIT.)

To SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, The Chase National Bank of the City of New York, a national banking association, Bank of America, a corporation, Pan American Petroleum Company, a corporation, William C. McDuffie, as Receiver of Richfield Oil Company of California, a corporation, William C. McDuffie, as Receiver of Pan American Petroleum Company, a corporation, Richfield Oil Company of California, a corporation, The United States of America, The Republic Supply Company of California, a corporation, Cities Service Company, a corporation, M. W. Lowery, Henry S. McKee, O. C. Field and R. R. Templeton (known and designated as Richfield Unsecured Creditors' Committee), Robert C. Adams, Thomas B. Eastland, Edward F. Hayes and Richard W. Millar (known and designated as Pan American Bondholders' Committee), G. Parker Toms, Robert C. Adams, F. S. Baer, Robert E. Hunter, Henry S. McKee and Richard W. Millar (known and designated as Richfield-Pan American Reorganization Committee), Security-First National Bank of Los Angeles, a national banking association, Pacific American Company, a corporation, American Company, a corporation, Manufacturers Trust Company of New York, a corporation, Citizens National Trust & Savings Bank of Los Angeles, a national banking association, First National Bank and Trust Company of Seattle, a national banking association, Continental Illinois Bank and Trust Company, a corporation, The First National Bank of Chicago, a national banking

association, Chemical National Bank and Trust Company, a national banking association, and California Bank, a corporation, appellees, Greeting:

You, and each of you, are hereby cited and admonished to appear at a Session of the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, State of California, in said Circuit within thirty (30) days of the date of this writ, pursuant to an order filed in the office of the Clerk of the United States District Court for the Southern District of California, Central Division, allowing an appeal by Universal Consolidated Oil Company, a corporation, intervenor herein and petitioner and appellant in the above entitled cause (designated as In Equity, Consolidated Cause No. S-125-J), from that certain order, judgment and decree made and entered by said United States District Court in said cause on September 26, 1934, adjudicating each, all and sundry the exceptions filed to the Report of the Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which Report was filed on May 26, 1933, in which appeal you, the parties first above mentioned, are appellees, and the said Universal Consolidated Oil Company, a corporation, intervenor herein, is appellant, to show cause, if any there be, why said order, judgment and decree of said United States District Court above mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable William P. James, United States District Judge of the Southern District of California, Ninth Judicial Circuit, this 26th day of Decembem, 1934.

Wm P James
UNITED STATES DISTRICT JUDGE.

Received a copy of within citation and assignment this 26th day of December, 1934:

Bauer, Macdonald, Schultheis & Pettit
By M. Gillespie
(Bauer, Macdonald, Schultheis & Pettit)

Solicitors for Robert C. Adams, Thomas B. Eastland, Edward F. Hayes, and Richard W. Millar, constituting the Pan American Bondholders' Committee; George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter, and Albert Van Court, constituting the Richfield Bondholders' Committee; G. Parker Thoms, Robert C. Adams, F. S. Baer, Robert E. Hunter, Henry S. McKee, and Richard W. Millar, constituting the Reorganization Committee.

Call & Murphey
By L. Robinson
(Call and Murphey)

Chandler, Wright & Ward
By Leo S. Chandler F.
(Chandler, Wright and Ward)

Solicitors for Henry S. McKee, O. C. Field, M. W. Lowreys, R. R. Templeton, and G. Parker Thoms, constituting the Richfield Unsecured Creditors' Committee;

Gibson, Dunn & Crutcher

By Homer D. Crotty
(Gibson, Dunn and Crutcher)

Solicitors for William C. McDuffie, as Receiver of Pan American Petroleum Company, William C. McDuffie as Receiver of Richfield Oil Company.

Received copy of the within Document, Dec. 27th, 1934

O'MELVENY, TULLER and MYERS
By Alex Rogers, Jr.

Solicitors for Security-First National Bank of Los Angeles, as Trustee.

Mudge, Stearn, Williams & Tucker

By Clarence M. Hanson
(Mudge, Stearn, Williams and Tucker

Freston and Files by Clarence M. Hanson

Solicitors for The Chase National Bank of the City of New York, and Bank of America.

Wm J. De Martini
By H. Strand
(Wm. J. de Martini)

Solicitor for Richfield Oil Company of California.

By Hill, Morgan & Bledsoe &
Musick & Martinson M.
(Hill, Morgan and Bledsoe
Evon Musick, Geo. Martinson)

Solicitors for Cities Service Company, a corporation.

By Clayton T Cochran
(Clayton T. Cochran)

Solicitor for Pan American Petroleum Company.

Lobdell & Watt
By Harold L Watt
(Lobdell & Watt)

Solicitors for The Suffolk Corporation.

Bauer, Macdonald, Schultheis & Pettit
By M. Gillespie
(Bauer, Macdonald, Schultheis & Pettit)

Solicitors for G. Parker Thoms, Robert C. Adams, F. S. Baer, Robert E. Hunter, Henry S. McKee, and Richard W. Millar, constituting Reorganization Committee; George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter, and Albert Van Court, constituting the Richfield Bondholders' Committee; Robert C. Adams, Thomas B. Eastland, Edward F. Hayes; and Richard W. Millar, constituting the Pan American Bondholders' Committee.

Call & Murphey
By L. Robinson
(Call and Murphey)

Solicitors for Henry S. McKee, O. C. Field, M. W. Lowrey, R. R. Templeton and G. Parker Thoms, constituting Richfield Unsecured Creditors' Committee; Pacific American Company, American Company, Manufactures Trust Company of New York, Citizens National Trust and Savings Bank of Los Angeles, First National Bank & Trust Company of Seattle, Continental Illinois Bank & Trust Company, The First National Bank of Chicago, Chemical National Bank & Trust Company, California Bank of Los Angeles, as Interveners, constituting the so-called Unsecured Bank Creditors' Committee.

Chandler, Wright & Ward
By Leo S. Chandler F.
(Chandler, Wright and Ward)

Solicitors for Henry S. McKee, O. C. Field, M. W. Lowrey, R. R. Templeton, and G. Parker Thoms, constituting Richfield Unsecured Creditors Committee; Pacific American Company, American Company, Manufactures Trust Company of New York, Citizens National Trust and Savings Bank of Los Angeles, First National Bank & Trust Company of Seattle, Continental Illinois Bank & Trust Company, The First National Bank of Chicago, Chemical National Bank & Trust Company, California Bank of Los Angeles, as Interveners, constituting the so-called Unsecured Bank Creditors' Committee; The Republic Supply Company of California.

Gibson, Dunn & Crutcher
By Homer D. Crotty
(Gibson, Dunn & Crutcher)

Solicitors for William C. McDuffie as Receiver of Richfield Oil Company of California; William C. McDuffie as Receiver for Pan American Petroleum Company.

Solicitors for Security-First National Bank of Los Angeles as Trustee; Security-First National Bank of Los Angeles.

Mudge, Stearn, Williams & Tucker
By Clarence M. Hanson
(Mudge, Stearns, Williams & Tucker)

Freston & Files
By Clarence M. Hanson
(Freston & Files)

Solicitors for The Chase National Bank of New York; Bank of America, Trustee,

Hill, Morgan & Bledsoe
By A. Morissey
(Hill, Morgan and Bledsoe)

Elvon Musick, Howard Burrell
By E. Perry Churchill
(Elvon Musick)

Solicitors for Cities Service Company, a corporation.

By Clayton T. Cochran
(Clayton T. Cochran)

Solicitor for Pan American Petroleum Company.

Dated at Los Angeles, California, this 27th day of December, 1934.

Atlee Pomerene by J R L
(Atlee Pomerene)

H. J. Crawford by J R L
(H. J. Crawford)

Frank Harrison by J R L
(Frank Harrison)

Special Assistants to the Attorney General of the United States.

Peirson M. Hall by J R L
(United States Attorney)

John R. Layng
(Special Assistant to the United States Attorney)

Solicitors for said Petitioner, United States of America.

[Endorsed]: Filed Jan. 10 1935 R. S. Zimmerman, Clerk By L. Wayne Thomas Deputy Clerk.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, Complainant,	)	
vs.	)	No. S-125.
	)	Consolidated
RICHFIELD OIL COMPANY OF CALIFORNIA, Defendant.	)	Cause.

In the Matter of the claim of UNIVERSAL CONSOLIDATED OIL COMPANY, in contest as to the correctness of the findings of the Special Master that the claimant, under its complaint in intervention, is entitled to have an interest declared in its favor in various properties held by Richfield receiver.

In the intervention matter the Master determined that trust funds of the claimant, misappropriated by the former officers of Richfield, had been, by the evidence, traced into various properties which came into the Receiver's hands, and there remain; that the claimant should be adjudged to own interests in such properties to the extent of the money amounts so traced, and be allowed its claim as non-secured and nonpreferential, for the remainder of the debt. There was no dispute but that the claimant was entitled to recover the sum of $1,183,148.23. The Master found that of the amount just stated, $403,993.92 was

sufficiently traced as invested in properties, leaving a balance of $779,154.31 as for a general and unsecured claim to be paid without preference.

With the debt amount admitted, the exceptions are made: first, by the claimant, which contends that a greater amount was traced into specific property than the Master found; secondly, by the Trustee for the bondholders, as well as by the Receiver, who contend that no amounts of money constituting trust funds were sufficiently traced into specific property. Involved in the latter contention is the claim that the transactions between the former officers of Richfield and the claimant company were those of borrower and lender simply, with no trust obligation resulting. The manifest interest of the Receiver here is, of course, only to perform his duty in seeing that all creditors are protected in their interests, and that the court shall have the assistance of his counsel in reaching a correct conclusion. The interest of the Trustee under the Richfield bonds is that in so far as the claimant Universal shall be held to have established a trust investment interest in property otherwise covered by the bond mortgage, to that extent the security of the bondholders is diminished. Unsecured creditors are interested for the opposite reason, i. e., that in so far as the claim of Universal may be satisfied out of otherwise mortgaged property, by just that much are proceeds from the sale of assets increased for distribution among them.

The Master, in an exhaustive opinion, reviewed the facts and discussed the decisions. As to his basic conclusion that the former officers of Richfield, acting through personal and selfish motives, and through their power on the Board of Directors of Universal, abstracted large amounts

of money, totalling the conceded sum, and used such monies in Richfield business, returning no security whatsoever to Universal, seems to me to be almost beyond even the suggestion of serious debate. The argument presented on the exceptions is pressed most strongly to the point, as to whether the Master correctly discerned and properly applied the equitable rules governing the rights of a beneficiary in pursuit of funds wrongly appropriated by a fiduciary. There is involved the matter of equitable practice in dealing with a case, as is this, where funds have been intermingled in a deposit account of the fiduciary; also where money has been drawn from such an account and invested in property. There is the question also as to what presumptions may be applied where the bank account of the fiduciary is constantly varying but never exhausted. The Master set up several possible ways under which the amount of trust money might be fixed under the conditions attending the bank transactions which affected the trust money. He presented in support of the conclusion finally reached the law, as it had been disclosed through the researches of himself and of counsel for the contending interests. If his conclusions are agreed to, his reasons must also be adopted, for they are clearly and ably stated, and support completely the judgment arrived at.

I have given the consideration to the exceptions filed, which the importance of the subject and the ability of counsel seriously contending, deserve. I am prepared to affirm the conclusions of the Master as against all excep-

tions filed. As I have heretofore stated, I do not believe it would be of any advantage to express my views in a lengthy opinion. We already have a very full exposition of the law made by the Master. Nothing could be gained by repeating an analysis of the decisions, or in again reciting extensively the facts. The result attained is certainly fair and equitable to all interests.

IT IS ORDERED that the Report of the Special Master recommending findings and decree in the suit of Universal Consolidated Oil Company, intervener, as filed in this Receivership proceeding, be and it is approved and confirmed; the findings and recommendations of the Master are adopted as those of the Court. The findings of the Special Master on the claim of the Universal Consolidated Oil Company, Master's Number 2637, as found on page 55 of the Master's Third Partial Report on Claims, as filed December 29, 1933, are approved and confirmed and adopted as the findings and conclusions of the Court. In the intervention suit it will be desirable that a formal decree be prepared and signed, supplementing the above order. The exceptions of the several parties appearing are overruled, and an exception is noted in their favor.

Dated September 17, 1934.

Wm. P. James

U. S. District Judge.

[Endorsed]: Filed Sep. 17, 1934. R. S. Zimmerman, Clerk By Murray E. Wire, Deputy Clerk.

At a stated term, to wit: The September Term, A. D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the 17th day of December in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable: WM. P. JAMES, District Judge.

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation, Complainant, vs. RICHFIELD OIL COMPANY OF CALIFORNIA a corporation, Defendant.	
SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, as trustee Plaintiff, vs. RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, and WILLIAM McDUFFIE, as Receiver of Richfield Oil Company of California, a corporation, Defendant.	In Equity Consolidated Cause No. S-125-J.

HARRY L. DUNN, of the firm of O'Melveny, Tuller & Myers, appearing at this time for and on behalf of plaintiff Security-First National Bank of Los Angeles, a national banking association, as trustee; George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court, constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein referred to, constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners; and each of them, gives oral notice of appeal from that certain order, judgment and decree entered herein on September 17, 1934, adjudicating each, all and sundry the exceptions filed to the Report of the Honorable William A. Bowen, Special Master with reference to the bill of intervention of Universal Consolidated Oil Company, which report was filed May 26, 1933, and presents petition for appeal, assignments of error, and order allowing appeal, which order is allowed and signed by the court fixing the cost bond thereon at $1000.00.

At a Term of the District Court of the United States, for the Southern District of California, Central Division, in the Ninth Judicial Circuit, held in the City of Los Angeles, State of California, on the 26 day of September, 1934.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation, Complainant, vs. RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, Defendant.	IN EQUITY CONSOLIDATED CAUSE No. S-125-J ORDER CONFIRMING REPORT OF SPECIAL MASTER ON BILL IN INTERVENTION OF UNIVERSAL
SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, as trustee, Plaintiff, vs. RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, and WILLIAM C. McDUFFIE, as Receiver of Richfield Oil Company of California, a corporation, Defendants.	CONSOLIDATED OIL COMPANY AND OVERRULING EXCEPTIONS TO THE REPORT ON THE CLAIM OF UNIVERSAL CONSOLIDATED OIL COMPANY, MASTER'S No. 2637, CONTAINED IN THE SPECIAL MASTER'S
UNIVERSAL CONSOLIDATED OIL COMPANY, a California corporation, Intervenor.	THIRD PARTIAL REPORT ON CLAIMS.

It appearing that William A. Bowen, Esq., appointed by this Court to pass upon the Bill in Intervention of Universal Consolidated Oil Company, and the pleadings in connection therewith, and said Special Master having on May 26, 1934, filed in the office of the Clerk of the above entitled court his report on the Bill in Intervention of Universal Consolidated Oil Company, and the parties to the above entitled cause having filed exceptions to said report, to-wit: Universal Consolidated Oil Company, Security-First National Bank of Los Angeles, and William C. McDuffie, as Receiver of Richfield Oil Company of California, and it further appearing that said Special Master had filed his Third Partial Report on Claims reporting on the claim of Universal Consolidated Oil Company, Master's No. 2637, to which said report exceptions were filed by Universal Consolidated Oil Company, Security-First National Bank of Los Angeles, and William C. McDuffie, as Receiver of Richfield Oil Company of California, and said reports and said exceptions having come on further to be heard at this term were argued by counsel, and thereupon upon consideration of said report and the exceptions thereto,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. That said reports of said Special Master upon the claim of Universal Consolidated Oil Company, Intervenor herein, as filed in the receivership proceedings be and they hereby are approved and confirmed;

2. That the exceptions filed by all parties to said Special Master's Reports are hereby overruled;

3. That said Special Master's Reports on the claim of Universal Consolidated Oil Company and the memo-

randum opinion thereon, dated September 17, 1934, are hereby incorporated in this decree and made a part hereof as if specifically set forth; and

4. That an exception is noted in favor of the parties filing exceptions.

DATED: Los Angeles, California, September 26, 1934.

Wm P James

Judge

Approved as to form as required by Rule 44:

GIBSON, DUNN & CRUTCHER,

By Homer D. Crotty.

Counsel for William C. McDuffie as Receiver of Richfield Oil Company of California.

O'MELVENY, TULLER & MYERS

By Pierce Works,

Counsel for Security-First National Bank of Los Angeles.

A. L. Weil

LeRoy M Edwards

Frankley and Spray

By L. W. Frankley

Counsel for Universal Consolidated Oil Company.

Decree entered and recorded Sept. 26, 1934. R. S. Zimmerman, Clerk. By Murray E. Wire, Deputy Clerk.

[Endorsed]: Filed Sep. 26, 1934. R. S. Zimmerman, Clerk By Murray E. Wire, Deputy Clerk.

At a stated term. to wit: The September Term, A. D. 1934, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 26th day of December in the year of our Lord one thousand nine hundred and thirty-four.

Present:

The Honorable: WM. P. JAMES, District Judge.

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation, Complainant, vs. RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, Defendant.	
SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, as Trustee, Plaintiff, vs. RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, and WILLIAM McDUFFIE, as Receiver of Richfield Oil Company of California, a corporation, Defendant.	In Equity Consolidated Cause No. S-125-J.

UNIVERSAL CONSOLIDATED)
OIL COMPANY, a California cor-)
poration, Intervener.)
)

PIERCE WORKS, of the firm of O'Melveny, Tuller & Myers, appearing at this time for and on behalf of plaintiff Security-First National Bank of Los Angeles, a national banking association, as trustee; George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court, constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein referred to constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners; First National Bank, Perryopolis, Pennsylvania, and Addie R. Boyd, and each of them, appeals in open court from that certain order, judgment and decree entered herein on September 26, 1934, adjudicating each, all and sundry the exceptions filed to the Report of the Honorable William A. Bowen, Special Master herein, with reference to the bill in intervention of Universal Consolidated Oil Company, which said report was filed on May 26, 1933, and presents petition for appeal, assignments of error, and order allowing appeal, which order is allowed and signed by the Court fixing the cost bond thereon at $500.00.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
CALIFORNIA, CENTRAL DIVISION

In Equity Consolidated Cause
No. S-125-J

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation,

Plaintiff,

vs.

RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation,

Defendant.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, as Trustee,

Plaintiff,

vs.

RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, and WILLIAM C. McDUFFIE, as Receiver of Richfield Oil Company of California, a corporation,

Defendants.

UNIVERSAL CONSOLIDATED OIL COMPANY, a California corporation,

Intervenor.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, as Trustee, GEORGE ARMSBY, F. S. BAER, HARRY J. BAUER, STANTON GRIFFIS, ROBERT E. HUNTER and ALBERT E. VAN COURT, constituting the Richfield Bondholders' Committee, et al.,

Appellants in No. 1,

vs.

CHASE NATIONAL BANK OF THE CITY OF NEW YORK, a national banking association, et al.,

Appellees in No. 1.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, as Trustee, GEORGE ARMSBY, F. S. BAER, HARRY J. BAUER, STANTON GRIFFIS, ROBERT E. HUNTER and ALBERT E. VAN COURT, constituting the Richfield Bondholders' Committee, et al.,

Appellants in No. 2,

vs.

CHASE NATIONAL BANK OF THE CITY OF NEW YORK, a national banking association, et al.,

Appellees in No. 2.

UNIVERSAL CONSOLIDATED OIL COMPANY, a California corporation,

Appellant in No. 3,

vs.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, et al.,

Appellees in No. 3.

AGREED STATEMENT OF CASE PURSUANT TO EQUITY RULE 77 UPON APPEALS FROM ORDERS DATED SEPTEMBER 17 AND SEPTEMBER 26, 1934 MADE BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

Pursuant to the terms of Equity Rule 77, the parties hereto, believing that the questions presented by the appeal herein of Security-First National Bank of Los Angeles, a national banking association, as Trustee, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court, constituting the Richfield Bondholders' Committee, the Committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein consisted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, from the order and decree rendered in the trial court in this cause on the 17th day of September,

1934 (designated herein for convenience Appeal No. 1), and the appeal of said parties from the order and decree rendered in the trial court in this cause on September 26, 1934 (designated herein for convenience Appeal No. 2), and the appeal of Universal Consolidated Oil Company from said order and decree of September 26, 1934 (designated herein for convenience Appeal No. 3), can be determined by the United States Circuit Court of Appeals for the Ninth Circuit, to which said appeals have been allowed, without an examination of all the pleadings and evidence, present this statement of the case, showing how the questions arose and were decided in said United States District Court, and setting forth such of the facts alleged and proved, or sought to be proved, as are deemed essential to a decision of such questions by said United States Circuit Court of Appeals, as follows:

CREDITOR'S ACTION FOR APPOINTMENT OF RECEIVER

On January 15, 1931, The Republic Supply Company of California, a California corporation, as plaintiff, instituted an action in the United States District Court for the Southern District of California, Central Division, against Richfield Oil Company of California, a Delaware corporation, as defendant, which cause is known as No. S-125-J; and in its complaint it alleged that the defendant was indebted to it in the sum of $282,909.77 upon an unsecured open book account for goods, wares and merchandise; and said plaintiff further alleged that the defendant was largely indebted, and had not the money necessary to meet its obligations then due and which would shortly thereafter become due; that the defendant's creditors were

pressing for payment and there was danger that some of such creditors might bring suits, levy attachments and issue executions upon the property of the defendant, with the consequence that the defendant would be forced to cease the conduct of its business, and that its assets would be sacrificed, and that such action would cause a great and irreparable loss and injury to the plaintiff and to the defendant; and praying that the Court administer the property and assets of Richfield Oil Company of California in accordance with the rights, equities, liens and priorities, if any, existing therein, and ascertain, decree and determine the rights of the plaintiff and of other creditors of the defendant, and for the purpose of preserving intact the property and assets of the defendant that a receiver or receivers be appointed of all of its properties and assets.

On January 15, 1931, the defendant filed its answer, admitting each and every allegation of the petition, and joining in the prayer thereof, including the prayer for the appointment of a receiver.

ORDER APPOINTING RECEIVER

Thereupon the Court, having jurisdiction of said cause, entered an order, on January 15, 1931, appointing William C. McDuffie as Receiver of all the property and assets of Richfield Oil Company of California, real, personal and mixed, of whatsoever kind and description, within the jurisdiction of the Court. The Receiver so appointed duly qualified as such and thereupon, under and by virtue of the authority of said order, duly entered and took possession of all of the properties and assets of Richfield Oil Company of California of every kind and description em-

braced in and covered by said order, and ever since has continued to hold possession thereof and to operate said properties.

ORDER DIRECTING CREDITORS TO FILE CLAIMS

That subsequent to the appointment and qualification of William C. McDuffie as Receiver an order was made and entered by the Court on February 11, 1931, to the effect that all persons having or asserting any claim or demand against Richfield Oil Company of California were directed and required, before a day named, to file the same with William C. McDuffie, Receiver, at his office in the City of Los Angeles, California, each of said claims or demands to be supported by an affidavit on behalf of the claimant, setting out the amount and nature of any lien or other security held by the claimant, and also any claim to preference in payment from the receivership estate over any other creditors of said Richfield Oil Company of California; and further providing that all persons failing to so present their claims or demands might be enjoined from thereafter asserting or enforcing any such claim or demand against the Receiver or said Richfield Oil Company of California, or against its assets or the proceeds of any assets of said Receiver or said Richfield Oil Company of California. That pursuant to said order, and within the time therein set forth, Universal Consolidated Oil Company filed its claim with the Receiver, being Claim No. 4622 as follows:

"In the District Court of the United States for the
Southern District of California
Central Division

———

The Republic Supply Company of California, a corporation,	#4622
Complainant,	IN EQUITY
-vs-	No. S-125-J
Richfield Oil Company of California, a corporation,	CLAIM OF UNIVERSAL CONSOLIDATED OIL COMPANY
Defendant.	

———

TO WILLIAM C. McDUFFIE, Receiver of and for the assets of Richfield Oil Company of California, and

TO RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation:

Universal Consolidated Oil Company, a California corporation, by and through its officers duly authorized by resolution of its Board of Directors, herewith presents its demand and claim against Richfield Oil Company of California for money and materials in the amount of $1,184,949.33 taken, withdrawn and withheld by Richfield Oil Company of California from claimant as is hereinafter set forth and at such times, amounts and items as is shown by the attached statement setting out such items and amounts, which statement is marked exhibit "A" and

made a part hereof. Claimant further makes a claim for interest at the rate of 7% per annum upon all claimant's funds, including both money and proper valuation of materials taken by the Richfield Oil Company of California, from the time of taking to the restoration thereof. That there are no offsets or counter-claims to the above stated amount representing such money and materials.

That claimant stands in the relation of a beneficiary of a trust and as such takes preference over all creditors of the Richfield Oil Company of California for the full amount of such demand and interest upon the following grounds:

That at a date prior to November 11th, 1929, Richfield Oil Company of California began acquiring the control of the subscribed and issued capital stock of claimant and on or about the month of June, 1930 acquired the controlling interest of claimant's subscribed and issued capital stock. That Richfield Oil Company of California ever since June, 1930 has been and now is the owner of the controlling interest of claimant's subscribed and issued capital stock; to-wit, approximately 52% thereof.

That at all times subsequent to the 11th day of November, 1929 Richfield Oil Company of California, by virtue of its stock ownership in claimant, actively and completely controlled the claimant's Board of Directors and officers and caused to be elected upon claimant's Board of Directors and as claimant's officers, directors and officers who were common to Richfield Oil Company of California. That due to such stock ownership and representation upon claimant's Board of Directors by directors common with Richfield Oil Company of California, and of such officers of claimant which were

common to Richfield Oil Company of California, Richfield Oil Company of California could and did maintain absolute domination and control of claimant and of its assets and acted and treated claimant's assets as though they formed a portion of the assets of Richfield Oil Company of California.

That the advances made by claimant either by way of cash or materials as shown by the attached account totaled the sum of $2,585,765.67. That none of these advances were authorized by claimant's Board of Directors and were without its knowledge or consent. That Richfield Oil Company of California, through its domination of the affairs and business of claimant as aforesaid, withdrew from claimant in money and property the sum of $2,585,765.67, none of which it has returned except the sum of $1,400,816.34, leaving a balance of $1,184,949.33 withheld and unreturned.

Claimant is informed and believes, and upon such information and belief alleges, that Richfield Oil Company of California was at all times subsequent to November 11th, 1929 insolvent and that Richfield Oil Company of California abstracted, received and held the said materials and money knowing that it was insolvent. That no notes or other evidences of indebtedness were given or received for such money or materials and claimant received no securities because thereof. That such acts upon the part of Richfield Oil Company of California were unauthorized and harmful to claimant and its stockholders other than Richfield Oil Company of California, and Richfield Oil Company of California thereby became and is charged as a trustee for the benefit of claimant and its stockholders other than Richfield Oil Company of California, to the full amount of all advances so made whether money or materials.

That claimant is informed and believes, and upon such information and belief alleges, that by reference to the books and records of Richfield Oil Company of California, part or all of such money and materials can be traced into certain specific property purchased by Richfield Oil Company of California with the said money and/or materials or the proceeds thereof, and that as to all such property claimant is entitled to have a lien upon and a preference to the property and from the proceeds thereof for the full amount of money and materials obtained by Richfield Oil Company of California from claimant as aforesaid prior to and preferred to all other creditors of Richfield Oil Company of California. That as to any amounts, whether of money or materials or the proceeds thereof, acquired by Richfield Oil Company of California from claimant as aforesaid and which cannot be traced into specific property now owned by Richfield Oil Company of California, and from which property claimant shall receive full reimbursement for the amounts so traced, claimant is entitled upon any dividend or disbursement from the general assets of Richfield Oil Company of California to claimant to have the full amount paid and disbursed applied solely to the benefit of claimant and its stockholders other than Richfield Oil Company of California, and for this purpose, to have any dividends and disbursements payable to claimant increased over that paid to other creditors of the Richfield Oil Company of California to such extent and so that Richfield Oil Company of California shall not be enriched and benefited as a stockholder of claimant through its own wrongful acts and the other creditors of Richfield Oil Company of California thereby receive a greater proportionate dividend than claimant.

This claim is filed without waiving any rights in law or equity which claimant may have by way of set-off or otherwise on account of any dividend or dividends or payment from funds now on hand or that may arise and are declared upon the stock of claimant owned by Richfield Oil Company of California.

Claimant further makes claim to an additional and contingent amount, the exact total of which it is unable to state at this time but which, from the best information, will approximate the sum of $50,210.50. That this amount arises from the following circumstances:— That in the offsets allowed Richfield Oil Company of California set forth in the statement hereto attached appear certain items for materials furnished claimant by Richfield Oil Company of California. That as to certain of this material the persons who sold the same are now attempting to hold claimant responsible therefor. That one suit with regard to a portion of such material has already been filed against Universal Consolidated Oil Company in this regard by The Republic Supply Company of California in the Superior Court of the State of California, in and for the County of Kern, and is for the sum of $21,324.11, together with costs and interest, and wherein the plaintiff is attempting to foreclose an alleged mechanic's lien upon certain real property of claimant. That claimant is informed and believes and upon such information and belief alleges that other suits will be instituted against claimant for other amounts. That claimant presents a claim for the amounts, if any, it may be compelled to pay because of such material and suits brought or which may be brought against claimant because thereof. That claimant will be compelled to defend such suits and further presents a claim for any

attorneys' fees which claimant will be compelled to expend in this connection.

Dated: April 15th, 1931.

UNIVERSAL CONSOLIDATED
OIL COMPANY

By R. E. STEARNS
Vice-President.

By L. E. LONG
Secretary.

(CORPORATE SEAL)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

L. E. LONG, Secretary of Universal Consolidated Oil Company, being first duly sworn, deposes and says: That I am the Secretary of Universal Consolidated Oil Company, the claimant in the foregoing claim, and that I make this verification for and on behalf of Universal Consolidated Oil Company; that I have read the foregoing claim and the same is true of my own knowledge except as to matters therein stated upon information and belief and as to those matter I believe it to be true.

L. E. LONG

Subscribed and sworn to before me this 15th day of April, 1931.

NORMAN F. SIMMONDS

Notary Public in and for the County of Los Angeles, State of California.

(Notarial Seal)

My Commission Expires February 4th, 1933

EXHIBIT "A"

STATEMENT

RICHFIELD OIL COMPANY OF CALIFORNIA IN ACCOUNT WITH UNIVERSAL CONSOLIDATED OIL COMPANY

DATE		DR.	CR.
1929			
Nov. 12	Cash	$ 25,000.00	
" 13	"	750,000.00	
Dec. 31	Oil	1,008.08	
" 31	Office Furniture	101.00	
" 31	Drill Pipe and Casing	3,146.97	
" 31	Power	404.34	
1930			
Jan. 3	Cash	200,000.00	
" 31	Power	453.99	
" 31	Oil	1,029.91	
" 31	Insurance Claim	73.82	
" 31	Drill Pipe	2,002.92	
Feb. 15	Cash	500,000.00	
" 25	"	100,000.00	
" 27	"	100,000.00	
" 10	Revenue Stamps	85.00	
" 14	" "	104.00	
" 28	Oil	997.58	
" 28	Power	228.45	
" 28	Insurance Claim	35.60	
Mar. 7	Revenue Stamps	23.00	
" 31	Glass Top for desk	35.39	
" 31	Oil	1,021.47	
Apr. 30	Oil	1,141.65	
" 15	Cash	600,000.00	

May	31	Oil	1,150.00
June	6	Cash	75,000.00
"	10	"	28,000.00
"	17	"	5,000.00
"	30	Oil	2,012.07
"	30	Ice	31.90
July	31	Oil	1,023.57
"	31	Ice	11.00
Aug.	14	Cash	95,000.00
"	31	Ice	9.00
"	31	Oil	22,692.83
"	31	Gas and Gasoline	1,175.53
"	31	Drill Pipe	3,571.22
"	31	Sloan Lease operating expense	176.12
Sept.	30	Oil	17,213.30
"	30	Gas and Gasoline	1,183.84
"	30	Ice	1.00
"	30	Power	136.22
Oct.	31	Oil	14,012.23
"	31	Gas and Gasoline	851.23
"	31	Revenue Stamps	8.30
"	31	Sloan Lease operating expense	357.58
"	31	Electric Motor	1,016.12
Nov.	30	Oil	9,723.49
"	30	Gas and Gasoline	514.49
"	30	Labor	573.12
"	30	Sloan Lease operating expense	332.57
		Carried forward	2,567,670.10

DATE		DR.	CR.
1930 Cont'd			
	Brought forward	2,567,670.10	
Dec. 31	Oil	9,735.48	
" 31	Gas & Gasoline	577.11	
" 31	Sloan Lease operating expense	673.94	
1931			
Jan. 14	Oil	4,136.50	
" 14	Power	808.69	
" 14	Tubing	1,840.09	
" 14	Gas and Gasoline	131.31	
" 14	Sloan Lease operating expense	192.45	
1929			
Dec. 31	By Check		101.00
" 31	" Field Material		8,470.25
" 31	" Check		260.26
1930			
Jan. 3	By Check		1,879.16
" 16	" "		144.08
" 21	" "		1,088.08
Feb. 15	" "		85.00
" 17	" "		100,000.00
Mar. 3	" "		1,029.91
" 11	" "		23.00
" 31	" Field Material		4,018.31
" 31	" Compensation Insurance		3,988.61
" 3	" Check		453.99
" 28	" "		228.45
Apr. 1	" "		997.58
" 15	" "		600,000.00
" 30	" Compensation Insurance		707.07

"	30	"	Auto Insurance	68.95
"	30	"	Field Material	3,447.87
May	31	"	Compensation Insurance	811.53
"	31	"	Field Material	4,644.13
June	30	"	Compensation Insurance	876.20
"	30	"	Field Material	8,696.52
July	15	"	Check	50,000.00
"	18	"	"	37,000.00
"	19	"	"	25,000.00
"	25	"	"	20,000.00
"	15	"	Dividend	91,316.50
"	31	"	Compensation Insurance	1,116.35
"	31	"	Field Material	20,703.73
Aug.	19	"	Check	40,000.00
"	25	"	"	20,000.00
"	31	"	Compensation Insurance	1,090.01
"	31	"	Field Material	34,483.37
Sept.	3	"	Check	15,000.00
"	10	"	"	20,000.00
"	11	"	"	5,000.00
"	18	"	"	15,000.00
"	27	"	"	20,000.00
"	30	"	Compensation Insurance	1,019.59
"	30	"	Field Material	28,810.70
		Carried forward		2,585,765.67	1,187,480.20

DATE		DR.	CR.
1930 Cont'd.			
	Brought forward	2,585,765.67	1,187,480.20
Oct. 2	By Check		15,000.00
" 11	" "		5,000.00
" 31	" Compensation Insurance		795.06
" 31	" Field Material		60,854.22
Nov. 30	" Compensation Insurance		786.79
" 30	" Field Material		16,886.93
Dec. 31	" Compensation Insurance		923.46
" 31	" Field Material		97,946.70
1931			
Jan. 10	" Check		11,000.00
" 14	" Compensation Insurance		326.80
" 14	" Field Material		3,816.18
	Balance Due Universal Consolidated Oil Company		1,184,949.33
	TOTALS	$2,585,765.67	2,585,765.67"

ORDERS APPOINTING SPECIAL MASTER TO HEAR CLAIMS

That thereafter, on September 2, 1931, William A. Bowen, Esq., was appointed Special Master in said cause to hear proof and report to the Court concerning the allowance or rejection of any and all claims and demands which had theretofore been rejected by the Receiver in whole or in part, and concerning the allowance or rejection of any and all claims or demands to which answers or objections were filed, and concerning any and all questions of lien, preference or priority as between creditors or classifications of creditors; and further providing that said Special Master should make and file his report concerning the various matters committed to him.

And thereafter, by a further order under date of October 24, 1931, the said Special Master, William A. Bowen, was directed to report to the Court, after making all needed computations, his findings of fact and conclusions of law, together with transcripts of the proceedings, for the advisement of the Court; but providing that nothing in said order or orders should be construed as meaning that the Special Master's findings of fact should be final, but only that he should find the facts, for the purpose of aiding the Court, and make his recommendation.

BILL OF COMPLAINT OF SECURITY-FIRST NATIONAL BANK OF LOS ANGELES TO FORECLOSE TRUST INDENTURE.

Richfield Oil Company of California, as of May 1, 1929, issued and sold for cash $25,000,000 aggregate principal amount of its First Mortgage and Collateral Trust Gold Bonds, Series A, 6% Convertible, which bonds were issued under and secured by a trust indenture dated May 1, 1929, to Security-First National Bank of Los Angeles, as Trustee.

There are now issued and outstanding bonds of said issue in the aggregate principal amount of $24,981,000.00 together with unpaid coupons maturing on and after May 1, 1931.

The trust indenture securing said bonds constitutes a lien upon the interest of Richfield in the properties involved in this appeal (hereinafter described in Schedule B of the Statement of Evidence), but it is stipulated that any lien upon the interest of Richfield in said properties established by Universal Consolidated Oil Company is prior to the lien of said trust indenture.

Pursuant to leave of the trial court first had and obtained, Security-First National Bank of Los Angeles, as Trustee under said trust indenture, on July 28, 1932 filed in the Trial Court its bill of complaint, in Cause No. X-63-J, against Richfield Oil Company of California and William C. McDuffie as Receiver of Richfield Oil Company of California to foreclose said trust indenture, which fore-

closure action is now pending. Thereafter and on July 28, 1932, said foreclosure action was consolidated by order of the trial court with the above mentioned receivership cause, No. S-125-J.

Each of the following is a party to said consolidated cause: Unsecured Creditors Protective Committee—Richfield Oil Company of California, The Chase National Bank of the City of New York, Bank of America, Pan American Petroleum Company, William C. McDuffie as Receiver of Pan American Petroleum Company, Cities Service Company, Pan American Petroleum Company Bondholders' Committee, United States of America, Richfield-Pan American Reorganization Committee, Security-First National Bank of Los Angeles in its individual capacity, Pacific American Company, American Company, Manufacturers Trust Company of New York, Citizens National Trust & Savings Bank of Los Angeles, First National Bank and Trust Company of Seattle, Continental-Illinois Bank and Trust Company, The First National Bank of Chicago, Chemical National Bank and Trust Company, and California Bank.

BILL IN INTERVENTION OF UNIVERSAL CONSOLIDATED OIL COMPANY AND ANSWERS.

Pursuant to leave of the trial court first had and obtained, Universal Consolidated Oil Company filed its bill in intervention in the above entitled cause on August 18, 1932, which bill in intervention is as follows:

"District Court of the United States in and for the Southern District of California Central Division

Security First National Bank of Los Angeles, as Trustee, Plaintiff, vs. Richfield Oil Company of California, a corporation, William C. McDuffie, as Receiver of Richfield Oil Company of California, Defendants. Universal Consolidated Oil Company, Intervenor.	In Equity S-125-J

BILL IN INTERVENTION OF UNIVERSAL CONSOLIDATED OIL COMPANY

To the Honorable Judges of the District Court of the United States, Southern District of California:

Universal Consolidated Oil Company files its bill of complaint in intervention against the Security First National Bank of Los Angeles, as trustee, Richfield Oil Company of California, and William C. McDuffie, as receiver of Richfield Oil Company of California, and respectfully shows:

I.

That Universal Consolidated Oil Company is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California, having its principal office and place of busi-

ness in the City of Los Angeles, County of Los Angeles, State of California, a citizen of California and a resident and inhabitant of the Southern District of California.

II.

That the defendant Richfield Oil Company of California is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, a citizen of said state and a resident and inhabitant of the District of Delaware, and its principal operating and general offices are in the City of Los Angeles, County of Los Angeles, State of California, within said Southern District of California. That the Security First National Bank of Los Angeles is now and at all times herein mentioned was, a national banking association organized and existing under the laws of the United States of America, and doing a banking business in the State of California, with its principal place of business in the County of Los Angeles, State of California.

III.

That heretofore, and on or about January 15, 1931, The Republic Supply Company of California, a corporation, filed its complaint before the above entitled Court, against the defendant, Richfield Oil Company of California, being an action in Equity, entitled No. S-125-J, to which bill and the allegations thereof, reference is hereby made for the further particulars thereof. That upon the filing of said bill of complaint by said The Republic Supply Company of California, said defendant, Richfield Oil Company of California entered its appearance, admitted that the allegations and each of them contained in said bill of complaint were true, consented to the relief prayed for in said bill of complaint, and prayed that the relief prayed

for in said bill of complaint be granted; thereupon, and on or about February 15, 1931, such proceedings were had that an order was made and entered by this Court, which order, among other things, appointed William C. McDuffie receiver of all the property, assets and business owned by or under the control or in the possession of said Richfield Oil Company of California, real, personal and mixed, of whatsoever kind and description, to which order reference is hereby made for the full particulars thereof. That the property, assets and business of which said William C. McDuffie was appointed the receiver as aforesaid, included all of the property set forth in "Exhibit A" hereto attached and made a part hereof, and all of which said property is held in trust by the said William C. McDuffie for the benefit of the intervenor, Universal Consolidated Oil Company, and subject to the prior lien of said Universal Consolidated Oil Company, as hereinafter set forth.

IV.

That at all times between October 1, 1929, and July 1, 1930, the said Richfield Oil Company of California actively and completely controlled the officers and a majority of the board of directors of the Universal Consolidated Oil Company, and the said Richfield Oil Company of California caused the board of directors of Universal Consolidated Oil Company to authorize certain persons who were officers and agents of Richfield Oil Company of California to draw checks upon the banks in which the moneys of Universal Oil Company were deposited.

That between October 1, 1929, and June 7, 1930, the defendant, Richfield Oil Company of California, without the knowledge or approval of the Universal Consolidated Oil Company, or of its board of directors, converted for

its own use and benefit from the said Universal Consolidated Oil Company one million seven hundred thousand dollars ($1,700,000.) of cash belonging to said Universal Consolidated Oil Company, and deposited said cash in the account of the Richfield Oil Company of California in the Security First National Bank of Los Angeles, and commingled same with the funds of the Richfield Oil Company of California; that the Richfield Oil Company of California at no time gave to the Universal Consolidated Oil Company any promissory note or notes agreeing to repay said money, or any other evidence indicating that it owed any money to the Universal Consolidated Oil Company; that the board of directors of the Universal Consolidated Oil Company did not at any time authorize the loaning of said money or any part thereof to the Richfield Oil Company of California; that neither the whole nor any part of said sum has been returned or repaid by defendant Richfield Oil Company of California or by defendant, William C. McDuffie to the Universal Consolidated Oil Company.

V.

That between November 1, 1929, and January 14, 1931, the Richfield Oil Company of California acquired certain property and assets which have passed into the hands of the defendant, William C. McDuffie, receiver of and for the assets of said Richfield Oil Company of California, and which said property and assets were paid for in whole or in part by funds converted by the Richfield Oil Company of California from the funds of the Universal Consolidated Oil Company as hereinabove alleged. That attached hereto, marked "Exhibit A", hereby referred to and made a part hereof to all intents and purposes as

though set forth herein at length, is a list of the property and assets paid for in whole or in part with funds taken from the Universal Consolidated Oil Company by Richfield Oil Company of California.

Petitioner alleges that it is entitled to have a prior lien upon and a preference to each asset set forth in said Exhibit A and to the proceeds thereof, for the amount of the funds of the Universal Consolidated Oil Company taken by Richfield Oil Company of California and converted to its own use and used in the purchase and acquisition of said asset which amounts are set forth in said Exhibit A opposite the description of each asset therein described, and petitioner alleges that all of said assets set forth in Exhibit A are held by the defendant William C. McDuffie, receiver of and for the assets of the Richfield Oil Company of California, as trustee, in trust for the benefit of petitioner, Universal Consolidated Oil Company. That all of said assets so acquired and paid for in whole or in part with the funds of the Universal Consolidated Oil Company were acquired subsequent to the execution and delivery by Richfield Oil Company of California to plaintiff of the mortgage or trust indenture referred to in plaintiff's bill of complaint.

VI.

Petitioner alleges that the Security First National Bank of Los Angeles heretofore filed its bill of complaint in the above entitled action to foreclose a mortgage and trust indenture of the Richfield Oil Company of California of date May 1, 1929, securing an authorized bonded indebtedness in the aggregate principal amount of seventy-five million dollars ($75,000,000.00.) which said mortgage and trust indenture purports to be a mortgage and lien upon

all of the assets and properties of the Richfield Oil Company of California, including all of the assets set forth in Exhibit A hereto attached. Petitioner alleges that the defendant, Richfield Oil Company of California has issued and outstanding, First Mortgage Bonds secured by the aforesaid trust indenture and mortgage, in an amount in excess of twenty-four million dollars ($24,000,000.). Petitioner alleges that the said defendant Richfield Oil Company of California has defaulted under the aforesaid trust indenture and mortgage, and that the said Security First National Bank of Los Angeles, as trustee under said trust indenture and mortgage, has declared said default and has instituted the above entitled proceeding for the purpose of having said trust indenture and mortgage, of date May 1, 1929, declared a valid and subsisting first lien and charge upon all of the properties and assets of the Richfield Oil Company of California, including all of the assets set forth in Exhibit A hereto attached, prior and superior to the interests and liens and claims of all persons whatsoever, including petitioner; that the said Security First National Bank of Los Angeles, in its said bill of complaint, further requests that all of said property and assets of the Richfield Oil Company of California, including the assets set forth in Exhibit A hereto attached, be sold, and that such sale may be made absolute and without any right of redemption on the part of any person whatsoever, and that the proper deed or deeds and other instruments of conveyance be delivered to the purchaser or purchasers under said foreclosure sale.

VII.

Petitioner alleges that if all or any of the assets set forth in Exhibit A hereto attached are sold free from the lien and claim of your petitioner as prayed for by the said Security First National Bank of Los Angeles in its complaint hereinbefore referred to, your petitioner will be deprived of the lien and claim which it has upon all of the assets set forth in said Exhibit A, and your petitioner alleges that its lien and claim upon each and all of the assets set forth in Exhibit A is superior to and prior to the lien and claim of the said Security First National Bank of Los Angeles, as trustee under said mortgage and trust indenture of the Richfield Oil Company of California of date May 1, 1929. Petitioner alleges that if the property and assets of the Richfield Oil Company of California are sold under the foreclosure of said trust deed and mortgage, of date May 1, 1929, free and discharged of the lien and claim of your petitioner, there will be no assets remaining in the hands of William C. McDuffie, receiver of the Richfield Oil Company of California, with which to pay either in whole or in part the claim of your petitioner.

Petitioner alleges that any sale of the assets of the Richfield Oil Company of California, as set forth in Exhibit A, should be made subject to the prior claim and lien of your petitioner in the sum of one million, seven hundred thousand dollars ($1,700,000.00).

VIII.

That petitioner has no adequate relief at law, and the relief to which it is entitled can be granted only by a court of equity.

IX.

WHEREFORE, petitioner prays that this honorable court order, adjudge and decree that Universal Consolidated Oil Company has a lien on the assets set forth in the exhibit attached to this bill and marked "Exhibit A" to the extent of the amount set opposite the description of such asset in the attached exhibit prior and superior to the lien of the Security First National Bank of Los Angeles under the terms of the mortgage and trust indenture of Richfield Oil Company of California dated May 1, 1929, securing an authorized bonded indebtedness in the aggregate principal amount of seventy-five million dollars ($75,000,000.), and prior and superior to the claims of William C. McDuffie, as receiver of Richfield Oil Company of California, and its creditors; that upon the sale of the property in accordance with a decree which may be entered by the court, and as prayed for by the Security First National Bank of Los Angeles, as trustee, that there be set apart and paid over to the Universal Consolidated Oil Company from each of the assets that may be sold which are set out and described in Exhibit A attached to this bill, the amount set opposite the description of said asset in said exhibit, and for such other and further relief as may to the court seem proper.

A. L. Weil

LeRoy M. Edwards

Attorneys for Universal Consolidated Oil Company

COUNTY OF LOS ANGELES.)
(SS
STATE OF CALIFORNIA,)

E. G. STARR, being by me first duly sworn, deposes and says:

That he is the Vice President of Universal Consolidated Oil Company, the Intervenor in the foregoing Bill in Intervention of Universal Consolidated Oil Company; that he has read the foregoing Bill in Intervention and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated upon his information and belief and as to those matters that he believes them to be true.

E. G. Starr

SUBSCRIBED AND SWORN TO BEFORE ME This 17 day of August, 1932.

(Notarial Seal) Oscar C. Sattinger

Notary Public in and for the County of Los Angeles, State of California

EXHIBIT A

Parcel 1

Service Station, Franklin Avenue and Vermont Avenue, Los Angeles, California, on real property described as follows: Lot 28 and North 1/2 of Lot 27, of Croake & McCain's Gem of Hollywood Tract, as per Map recorded in Book 6, page 28, of Maps, in the office of County Recorder, County of Los Angeles, State of California.

Amount paid $11,000.00

Parcel 2

Storage tank built by Western Pipe and Steel Company, at Rioco Refineries, Hynes, California.

Amount paid $506,906.19

Parcel 3

Steamship "KEKOSKEE."

Amount paid $68,843.50

Parcel 4

Steamship "LARRY DOHENY."

Amount paid $164,746.20

Parcel 5

Steamship "PAT DOHENY."

Amount paid $168,663.06

Parcel 6

Terminal and Marine site at Richmond, California, including real estate described as follows:

That certain real property situated in the City of Richmond, State of California, particularly described as follows:

Lot 7, Section 25, Township 1 North, Range 5 West, M. D. B. & M. as designated on Map entitled "Map No. 1 of Salt Marsh and Tide Lot Lands, situate in the County of Contra Costa, State of California, 1872" on file in the Office of Surveyor General, Sacramento, California.

Lot 11, Section 25, Township 1 North, Range 5 West, M. D. B. & M., as designated on Map entitled "Map 1 of Salt Marsh and Tide Lot Lands, situate in the County of Contra Costa, State of California, 1872," on file in the office of Surveyor General, Sacramento, California.

Lot No. 10, Section 25, Township 1 North, Range 5 West, M. D. B. & M., as designated on Map entitled "Map No. 1 of Salt Marsh and Tide Lot Lands, situate in the County of Contra Costa, State of California, 1872," on file in the Office of the Surveyor General, Sacramento, California.

Lot 44 as designated on map entitled "Map of San Pablo Rancho, accompanying and forming a part of the Final Report of the Referees in partition" which map was filed in the office of the Recorder of the County of Contra Costa, State of California, on March 5, 1894, containing 236.49 acres of land, more or less.

Lot 45 as designated on the map entitled, "Map of San Pablo Rancho, accompanying and forming a part of the

Final Report of the Referees in partition" which map was filed in the office of the Recorder of the County of Contra Costa, State of California, on March 5, 1894, containing 152.81 acres of land, more or less.

Lots 1 and 2 in Section 26 and Lot 32 in Section 23 and Lot 8 in Section 25, all in Township 1 North, Range 5 West, Mount Diablo Base and Meridian, as designated on the Map entitled "Map No. 1 of Salt Marsh and Tide Lands situate in the County of Contra Costa, State of California, 1872" containing 56.05 acres of land, more or less, and the original of which map is on file in the office of the Surveyor General of the State of California, Sacramento, California.

TOGETHER WITH all buildings, machinery and improvements of every kind and character situated thereon or connected therewith.

Amount paid $265,914.94

Parcel 7

Richville camp site, Long Beach, California, being that certain real property particularly described as follows:

A portion of the Rancho Los Serritos, as per map recorded in book 2, page 202 of patents, records of said county, described as follows: Beginning at a point on the southeasterly line of that certain parcel of land conveyed to the Los Angeles Terminal Railway Company by deed dated June 19, 1891 and recorded in book 732, page 184 of deeds, records of said county, said true point of beginning being more particularly described as follows: Commencing at the northwest corner of lot eight (8) of the American Colony tract, as per map recorded in book

19, pages 89 and 90, miscellaneous records of said county; thence along the northerly line of said lot eight (8) north 89°, 57′ 25″ each, eight hundred eighty-six and eighty-nine hundredths (886.89) feet; thence north 0° 2′ 35″ west, four hundred fifty-six and sixty-two hundredths (456.62) feet, to the true point of beginning; thence along the southerly line of that parcel of land deeded to the Los Angeles and Salt Lake Railroad Company, September 15, 1927, on a curve concave southeasterly, having a radius of four hundred fifty-one and seventy-three hundredths (451.73) feet, and a tangent bearing south 27° 25′ 20″ west, a distance of four hundred ninety-three and two hundredths (493.02) feet; thence following along said railroad property line, tangent to said curve north 89° 57′ 25″ east, a distance of one thousand one and fifty-five hundredths ((1,001.55) feet; thence south 0° 2′ 35″ east, hundredths (1,001.55) feet; thence south 0° 2′ 35″ east, six hundred sixty (660) feet to the northerly line of Wardlow Road, as heretofore deeded to the County of Los Angeles; thence north 89° 57′ 25″ west, along the northerly line of Wardlow Road, to the intersection with the easterly line of the parcel of land heretofore mentioned as having been deeded to the Los Angeles Terminal Railway Company, a distance of fifteen hundred thirty-seven and fifty-four hundredths (1,537.54) feet, more or less; thence following northeasterly along the easterly line of the property of the Los Angeles Terminal Railway Company, as above mentioned, on a curve concave northwesterly, having a radius of twenty-nine hundred four and nine-tenths (2,904.9) feet, a distance of three hundred seventy-nine and eighty-four hundredths (379.84) feet to a point where the tangent to the curve

bears south 14° 43′ 45″ west; thence following along the said line of the Los Angeles Terminal Railway Company on a curve concave northwesterly, having a radius of fifty-seven hundred sixty-nine and sixty-five hundredths (5,769.65) feet, a distance of fifty-eight and fifty-six hundredths (58.56) feet to the true point of beginning, comprising an area of twenty-one and ten hundredths (21.10) acres, more or less.

EXCEPTING THEREFROM the east fifty (50) feet thereof reserved for roadway purposes. ALSO subject to rights-of-way, etc., of record.

Amount paid $15,825.00

Parcel 8

Riverside Boulevard and Sutterville Road property, at Sacramento, California, being all that real estate property situate in the County of Sacramento, State of California, described as follows:

Beginning at a point on the center line of Sutterville Road and the southerly limits of the City of Sacramento, located north 34° 26½′ west 3,716.53 feet from an iron bar, set December 7, 1929 by Drury Butler, County Surveyor of Sacramento County, as reestablishing the southeast corner of the northeast quarter of section 23, township 8 north, range 4 east Mount Diablo Base and Meridian, under authority of the statutes of 1905, page 102, and running thence south 39° 08′ west 20.12 feet to a 2″ iron pipe; thence continue south 39° 18′ west 489.32 feet or a total distance of 509.44 feet to a 2″ pipe; thence north 50° 45′ west 642.4 feet to a 2″ iron pipe; thence continue north 50° 45′ west 184 feet or a total

distance of 826.4 feet to the low water mark on the easterly bank of the Sacramento River; thence up said river and following the low water mark thereof, the following courses and distances:

North 30° 57′ east 327.76 feet; north 26° 27′ east 70.72 feet to a point 80 feet southerly of the Sherburn property; thence south 68° 28′ east 178 feet to a point on the westerly line of the lands purchased by the City of Sacramento from A. M. Mull, from which point a pipe marking a corner of the Sherburn property bears north 33° 45′ east 80 feet and a pipe marking the northwest corner of block 156 of the town of Sutter bears north 33° 45′ east 80 feet and north 39° 15′ east 212.38 feet; thence along the westerly line of the said property to the center line of the Sutterville Road and the southerly limits of Sacramento; thence along the center line of said Sutterville Road and the southerly limits of said City the following courses and distances: South 57° 16′ east 168.15 feet south 64° 59′ east 559.81 feet to the point of beginning and containing 8.3 acres, excepting therefrom all that portion of said property which lies between the low water mark and the line of ordinary high water mark of the Sacramento River.

All that real property situate, lying and being in the County of Sacramento, State of California, known, designated and described as follows, to-wit:

A piece or parcel of land in section 23, township 8 north, range 4 east, M. D. B. & M., and being that portion of all the land of F. Lachenmeyer lying south of the Sutterville Road and west of the westerly right-of-way of the Southern Pacific Railroad Company's operated line to Isleton.

A piece or parcel of land in section 23, township 8 north, range 4 east, M. D. B. & M., and being that portion of all the land of F. Lachenmeyer lying south of Sutterville Road and east of the westerly right-of-way line of the Southern Pacific Railroad Company's operated line to Isleton.

Amount paid $11,600.00

Parcel 9

Absorption plant and vapor recovery system, Watson plant, Los Angeles County, California, constructed by Fluor Construction Company.

Amount paid $205,994.99

Parcel 10

Sludge burner located at Watson Refinery, Watson, California, built by J. T. Thorpe & Sons.

Amount paid $13,139.01

Parcel 11

813 shares of the capital stock of Hydrogeneration Process Company (purchased from Hyro-Patents Co. and Standard I. G. Company).

Amount paid $43,089.00

Parcel 12

133,033 shares of the common capital stock of Universal Consolidated Oil Company.

Amount paid $277,604.27"

Thereafter Security First National Bank of Los Angeles filed its answer to said bill in intervention of Universal Consolidated Oil Company, which answer is as follows:

"In the District Court of the United States
Southern District of California
Central Division

Security-First National Bank of Los Angeles, a national banking association, as Trustee, Plaintiff, vs. Richfield Oil Company of California, a corporation, William C. McDuffie, as Receiver of Richfield Oil Company of California, Defendants.	In Equity No. S-125-J ANSWER OF SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, AS TRUSTEE, TO BILL IN INTERVENTION OF UNIVERSAL CONSOLIDATED OIL COMPANY.
Universal Consolidated Oil Company, a corporation, Intervenor, vs. Security-First National Bank of Los Angeles, a national banking association, as Trustee, Richfield Oil Company of California, a cor-	

poration, and William C. McDuffie, as Receiver of Richfield Oil Company of California,
Defendants in Intervention.

TO THE HONORABLE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

Now comes SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, as trustee under the mortgage and trust indenture referred to in the bill of intervention herein, and answering said bill of intervention, admits, denies and alleges as follows:

1. Admits the allegations contained in Paragraphs I and II of said bill in intervention.

2. Answering Paragraph III of said bill, alleges that this defendant in intervention is without knowledge as to whether all or any of the property in said Paragraph III referred to is held in trust by William C. McDuffie either for the benefit of intervenor or subject to the prior or any lien of Universal Consolidated Oil Company, all as set forth in the bill of intervention herein, or otherwise, or at all. Otherwise admits the allegations of said Paragraph III.

3. Answering Paragraph IV of said bill, admits that between October 1, 1929 and June 7, 1930, cash aggregating or in excess of one million seven hundred thousand dollars ($1,700,000.) was deposited by Richfield Oil Company of California in the Security-First National

Bank of Los Angeles and commingled with the funds of Richfield Oil Company of California. As to the various other matters and things in said paragraph alleged, and each of them, this defendant in intervention is without knowledge.

4. Answering Paragraph V of said bill, this defendant in intervention alleges that it is without knowledge as to the various matters and things in said paragraph alleged, or any of them.

5. This defendant in intervention admits the allegations contained in Paragraph VI of said bill.

6. Answering Paragraph VII of said bill, this defendant in intervention alleges that it is without knowledge of either the existence or the extent, if any, of the lien or claim in said paragraph referred to and alleges that it is likewise without knowledge as to each and all of the various matters and things in said paragraph alleged.

7. Answering Paragraph VIII of said bill, this defendant in intervention alleges that it is without knowledge as to the various matters and things, and each of them, in said paragraph alleged.

WHEREFORE, this defendant in intervention prays that intervenor herein take nothing and that defendant in intervention recover its costs herein incurred.

O'MELVENY, TULLER & MYERS
And PIERCE WORKS

Attorneys for Security-First National Bank of of Los Angeles, as Trustee.

COUNTY OF LOS ANGELES)
) SS.
STATE OF CALIFORNIA)

C. C. Hogan, being duly sworn, deposes and says: That the answering defendant in intervention in the within-entitled action is a national banking association, and that affiant is an officer thereof, to-wit, the Asst. Secretary, and makes this verification for and on behalf of said national banking association.

That affiant has read the foregoing answer of Security-First National Bank of Los Angeles, as Trustee, to bill in intervention of Universal Consolidated Oil Company and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information or belief, and as to such matters he believes it to be true.

C C Hogan

Subscribed and sworn to before me this 26th day of November, 1932.

(Notarial Seal) S Robertson
Notary Public in and for the County of Los Angeles, State of California."

Thereafter Richfield Oil Company of California and William C. McDuffie, as Receiver of Richfield Oil Company of California, filed an answer to said bill in intervention of Universal Consolidated Oil Company, which answer is as follows:

"In the District Court of the United States
Southern District of California
Central Division

Security First National Bank of Los Angeles, as Trustee,	)	
Plaintiff,	)	
vs.	)	In Equity S-125-J
Richfield Oil Company of California, a corporation, William C. McDuffie, as Receiver of Richfield Oil Company of California,	)	ANSWER TO BILL IN INTERVENTION OF UNIVERSAL CONSOLIDATED OIL COMPANY.
Defendants,	)	
Universal Consolidated Oil Company,	)	
Intervenor.	)	

To the Honorable Judges of the District Court of the United States, for the Southern District of California, Central Division:

Richfield Oil Company of California, a corporation, and William C. McDuffie, as Receiver of Richfield Oil Company of California, file their answer to the bill of complaint in intervention of Universal Consolidated Oil Company against Security-First National Bank of Los Angeles, as Trustee, Richfield Oil Company of California, and William C. McDuffie, as Receiver of Richfield Oil Company of California, and respectfully admit, deny and allege as follows:

I.

Answering Paragraph III of said bill in intervention of Universal Consolidated Oil Company, the defendants answering hereby do hereby deny that the property, assets and business or any of the property or assets or business of which said William C. McDuffie was appointed the receiver, as alleged in said bill in intervention, is held in trust or otherwise or at all by the said William C. McDuffie for the benefit of the intervenor, Universal Consolidated Oil Company, and subject to the prior lien or any lien of said Universal Consolidated Oil Company.

II.

Answering Paragraph IV of said bill in intervention of Universal Consolidated Oil Company, the defendants answering hereby do hereby deny that at all times or at any times between October 1, 1929, and July 1, 1930, or at any other time, or at all, the said Richfield Oil Company of California actively and completely or at all controlled the officers and a majority of the board of directors or any officer or any director of the Universal Consolidated Oil Company, and deny that the said Richfield Oil Company of California caused the board of directors of Universal Consolidated Oil Company to authorize certain persons who were officers and agents of Richfield Oil Company of California to draw checks upon the banks in which the moneys of Universal Consolidated Oil Company were deposited, and deny that between October 1, 1929, and June 7, 1930, or at any other time, the defendant Richfield Oil Company of California, either without the knowledge or authority or approval of Universal Consolidated Oil Company or of its board

of directors, or at all, converted for its own use and benefit or at all from the said Universal Consolidated Oil Company One Million Seven Hundred Thousand Dollars ($1,700,000.00), or any other sum or sums whatsoever, belonging to said Universal Consolidated Oil Company, and deny that said amount of cash or any cash, or any sum or property whatsoever, belonging to said Universal Consolidated Oil Company was deposited in the account of Richfield Oil Company of California in the Security-First National Bank of Los Angeles or in any other bank and commingled with the funds of the Richfield Oil Company of California or used in any other manner whatsoever, and deny that the Richfield Oil Company of California did not give to Universal Consolidated Oil Company any evidence indicating that it owed any money to the Universal Consolidated Oil Company, and deny that the board of directors of the Universal Consolidated Oil Company did not at any time authorize the loaning of said money or any part thereof to the Richfield Oil Company of California, and deny that neither the whole nor any part of said sum has been returned or repaid by defendant Richfield Oil Company of California or by defendant William C. McDuffie, as Receiver of Richfield Oil Company of California, to the Universal Consolidated Oil Company; and in further answer to said Paragraph IV of said bill in intervention said defendants answering hereby do hereby allege that between November 13, 1929, and August 14, 1930, both dates inclusive, Universal Consolidated Oil Company loaned to Richfield Oil Company of California Two Million Four Hundred Forty-eight Thousand Dollars ($2,448,000.00) by checks drawn on the bank accounts of Universal Consolidated Oil Company and signed on

behalf of Universal Consolidated Oil Company in each instance by L. E. Long, together with one of the following, to-wit: R. W. McKee, R. B. Charlesworth, or J. S. Wallace; that the proceeds of said loans were deposited by Richfield Oil Company of California in the account of the latter in the Security-First National Bank of Los Angeles and commingled with other funds of Richfield Oil Company of California in said account; that the amount of said loans was in each instance recorded on the books of Universal Consolidated Oil Company and of Richfield Oil Company of California and interest thereon was invoiced monthly to Richfield Oil Company of California by Universal Consolidated Oil Company, and by the time of the appointment of William C. McDuffie as Receiver of Richfield Oil Company of California, on January 15, 1931, the principal amount of said loans of Universal Consolidated Oil Company to Richfield Oil Company of California had been reduced to One Million One Hundred Eighty-three Thousand One Hundred Forty-eight and 23/100 Dollars ($1,183,148.23) and the unpaid interest thereon had been reduced to Sixty-three Thousand Fifty-six and 93/100 Dollars ($63,056.93), by payments in the following manner, recorded on the books of both companies, to-wit:

(a) Payment of Nine Hundred Seventy-three Thousand Dollars ($973,000.00) upon the principal amount of said loans by checks drawn by Richfield Oil Company of California on its said account with Security-First National Bank of Los Angeles payable to the order of and cashed by Universal Consolidated Oil Company,

(b) Payment of Ninety-one Thousand Three Hundred Sixteen and 50/100 Dollars ($91,316.50) upon the

principal amount of said loans by credit covering dividend of fifty cents (50¢) per share on one hundred eighty-two thousand six hundred thirty-three (182,633) shares of stock of Universal Consolidated Oil Company held by Richfield Oil Company of California,

(c) Payment of Two Hundred Thousand Five Hundred Thirty-five and 27/100 Dollars ($200,535.27) upon the principal amount of said loans by monthly credits to Richfield Oil Company of California representing merchandise and services purchased for and furnished to Universal Consolidated Oil Company by Richfield Oil Company of California,

(d) Payment of One Thousand Eight Hundred Seventy-nine and 16/100 Dollars ($1,879.16) upon the interest accrued upon said loans by check drawn by Richfield Oil Company of California on its said account with Security-First National Bank of Los Angeles payable to the order of and cashed by Universal Consolidated Oil Company;

that by reason of the foregoing Richfield Oil Company of California was indebted to Universal Consolidated Oil Company at January 15, 1931, in the amount of One Million Two Hundred Forty-six Thousand Two Hundred Five and 16/100 Dollars ($1,246,205.16) on account of both principal and interest on said loans and continues so indebted.

III.

Answering Paragraph V of said bill in intervention of Universal Consolidated Oil Company, the defendants answering hereby do hereby deny that any property or assets acquired by Richfield Oil Company of California between November 1, 1929, and January 14, 1931, or at

any other time, which have passed into the hands of William C. McDuffie as Receiver of Richfield Oil Company of California, were paid for in whole or in part by funds of Universal Consolidated Oil Company either converted by Richfield Oil Company of California or otherwise, and deny that the property and assets appearing upon the list of property and assets marked Exhibit "A" attached to said bill in intervention and made a part thereof were paid for in whole or in part with funds taken from Universal Consolidated Oil Company by Richfield Oil Company of California or by funds belonging to Universal Consolidated Oil Company, and deny that Universal Consolidated Oil Company is entitled to have a prior lien or any lien upon or a preference to any property or assets in the possession of William C. McDuffie, as Receiver of Richfield Oil Company of California, or to the property and assets set forth in said list of properties and assets marked Exhibit "A" and attached to said bill in intervention or the proceeds thereof, for any amount whatsoever, and deny that said property and assets described in said Exhibit "A" to said bill in intervention herein or any other property and assets are held by the defendant William C. McDuffie, as Receiver of Richfield Oil Company of California, as trustee, in trust, for the benefit of Universal Consolidated Oil Company or in any other capacity for the benefit of Universal Consolidated Oil Company, but admit that all of the property and assets set forth on the list marked Exhibit "A" and attached to said bill in intervention were acquired by Richfield Oil Company of California subsequent to the execution and delivery by Richfield Oil Company of California to Security-First National Bank of Los Angeles of the mortgage or trust indenture referred to in the

bill of complaint filed herein by Security-First National Bank of Los Angeles, as Trustee, for foreclosure of such mortgage or deed of trust.

IV.

Answering Paragraph VII of said bill in intervention of Universal Consolidated Oil Company, the defendants answering hereby do hereby deny that Universal Consolidated Oil Company has any lien or claim of which it might be deprived if all or any of the assets set forth in Exhibit "A" to said bill in intervention are sold free from the alleged lien or claim of Universal Consolidated Oil Company, and deny that said Universal Consolidated Oil Company has any lien or claim upon each and all or any of the assets set forth in Exhibit "A" to said bill in intervention, either superior to and prior to the lien and claim of said Security-First National Bank of Los Angeles, as Trustee under said mortgage and trust indenture of Richfield Oil Company of California dated May 1, 1929, or at all, and deny that if the property and assets of Richfield Oil Company of California which are subject to said deed of trust and mortgage dated May 1, 1929, are sold under foreclosure of said deed of trust and mortgage, free and discharged of the alleged lien and claim of Universal Consolidated Oil Company, there will be no assets remaining in the hands of William C. McDuffie, as Receiver of Richfield Oil Company of California, with which to pay, either in whole or in part, the indebtedness of Richfield Oil Company of California to Universal Consolidated Oil Company, as hereinbefore set forth, and deny that any sale of the assets of Richfield Oil Company of California set forth in Exhibit "A" to said bill in intervention should be made subject

to the alleged claim and lien of Universal Consolidated Oil Company in the sum of One Million Seven Hundred Thousand Dollars ($1,700,000.00), or in any other sum or amount whatsoever.

V.

Answering Paragraph VIII of said bill in intervention of Universal Consolidated Oil Company, the defendants answering hereby do hereby deny that said Universal Consolidated Oil Company has no adequate relief at law, and in further answer to said Paragraph VIII allege that said Universal Consolidated Oil Company has filed a proof of claim with William C. McDuffie, as Receiver of Richfield Oil Company of California, against Richfield Oil Company of California, in the stated amount of One Million One Hundred Eighty-four Thousand Nine Hundred Forty-nine and 33/100 Dollars ($1,184,949.33) and an additional contingent claim of Fifty Thousand Two Hundred Ten and 50/100 Dollars ($50,210.50), with interest on both sums at seven per cent (7%) per annum.

WHEREFORE, these defendants pray that said petition in intervention be referred to William A. Bowen, Special Master herein, to be heard at the same time as the said proof of claim of said Universal Consolidated Oil Company, and that upon the hearing before said Special Master the relief sought in said bill in intervention be denied to Universal Consolidated Oil Company and that Universal Consolidated Oil Company be allowed an unsecured non-preferred general claim against Richfield Oil Company of California in the receivership of the latter in the amount of One Million Two Hundred Forty-

six Thousand Two Hundred Five and 16/100 Dollars ($1,246,205.16).

Dated: Los Angeles, California, November 15th, 1932.

GIBSON, DUNN & CRUTCHER

By Homer D. Crotty,

Solicitors for Richfield Oil Company of California and William C. McDuffie, as Receiver of Richfield Oil Company of California.

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

J. S. WALLACE, being by me first duly sworn, deposes and says: That he is the vice-president of Richfield Oil Company of California, a corporation, one of the Defendants in the foregoing Bill in Intervention of Universal Consolidated Oil Company, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters, that he believes it to be true.

J. S. Wallace.

Subscribed and sworn to before me this 15th day of November, 1932.

Richard L. Wallach,

Notary Public in and for said County and State.

My Commission Expires: Oct. 23, 1936."

APPOINTMENT OF SPECIAL MASTER TO HEAR THE ISSUES PRESENTED BY THE BILL IN INTERVENTION OF UNIVERSAL CONSOLIDATED OIL COMPANY.

Pursuant to stipulation of the attorneys of record for Security-First National Bank of Los Angeles, as Trustee, and for Universal Consolidated Oil Company, and for Richfield Oil Company of California, and for William C. McDuffie, as Receiver of Richfield Oil Company of California, and on December 6th, 1932, William A. Bowen, Esq., was appointed Special Master to hear the issues presented by the bill in intervention of Universal Consolidated Oil Company, set forth above, and the answers thereto set forth above, which hearing was ordered to be consolidated with and held at the same time as the hearings upon the proof of claim filed by Universal Consolidated Oil Company hereinabove set forth, with the intent and purpose that said proof of claim and said bill in intervention be disposed of at a single hearing and that posed of jointly by said Special Master on the basis of all the issues presented by said bill in intervention be dissaid hearing.

STATEMENT OF EVIDENCE

Inasmuch as the evidence is without material dispute and certain of the facts which were controverted at the hearing before the Special Master and the trial court have been conceded upon appeal, it has been possible to condense to a great extent the evidence introduced before the trial court. The following statement, though not considered by witnesses, contains all of the evidence upon the

points in controversy in the appeals of the Security-First National Bank as trustee under the Richfield bond issue and the Universal Consolidated Oil Company.

It is admitted and agreed by all parties that Richfield Oil Company of California, after purchasing enough of the stock of Universal Consolidated Oil Company to obtain control of the board of directors of that corporation, thereupon but prior to January 15, 1931, misappropriated from Universal a net sum of $1,625,000.00. It is also admitted that that misappropriation was such as to constitute Richfield the trustee of a constructive trust in which Universal was the beneficiary.

The only matter concerning which there is any controversy on these appeals relates to the question of whether or not Universal has sufficiently traced those trust funds into property purchased by Richfield from the bank account in which the trust funds had been commingled with other funds belonging to the trustee. Security-First National Bank of Los Angeles as trustee, contends that no part of the funds has been traced, while Universal contends that more than the amount awarded by the trial court was sufficiently traced into tangible property thus purchased.

The whole of the $1,625,000.00 transferred from Universal to Richfield was deposited in installments by Richfield in its bank account at the Security-First National Bank of Los Angeles and there commingled with the moneys of Richfield. All of the properties and assets here involved were paid for in whole or in part by checks on said bank account.

The account in question was an ordinary commercial checking account. At the time of the first deposit of

Universal moneys, Richfield had a large balance in the account. That balance fluctuated from day to day as Richfield deposited and withdrew large sums of its own money in addition to the money of Universal. These deposits from sources other than Universal amounted to $81,903,908.39 from November 13, 1929, to January 14, 1931.

However, the account of Richfield in the Security-First National Bank had been completely depleted on January 8, 1931, a week before the appointment of the receiver, and at the close of business on January 8, 1931, there existed an overdraft of $18,080.18.

The evidence introduced by the parties relating to the tracing by Universal of its misappropriated moneys into the properties purchased by Richfield out of the bank account in which the funds had been commingled may best be set forth in the form of the summary (Schedule A) shown below.

Column one of the summary represents the date; column two, the deposits of Universal moneys in the Richfield account; column three, the daily closing balance of that account, in which is reflected all checks charged against the account and all deposits credited to the account during the day; column four, the lowest posted balances shown on the bank's books during any day between takings of Universal funds; column five, the lowest balance ascertained by deducting all checks cleared each day before crediting deposits made during the same day; and column six, the particular parcel upon which payments were made on the date indicated in column one and the amount paid on such parcel from said bank account. The materiality of the data set forth in columns

three, four and five will, of course, be made clear in the briefs so that no particular discussion in that regard is required here. The matter set forth in column four, however (the lowest daily posted balance), does require some explanation and this is best afforded by a brief reference to the evidence concerning the bookkeeping methods of the bank.

Security-First National Bank keeps its customers' accounts on bookkeeping machines. For the purpose of posting checks or deposits to the account of a customer, the ledger sheets are inserted in the machines and the items to be included in the account are posted therein. Before extracting the sheet from the machine it is necessary to place the balance on the ledger sheet. The results so obtained are what are referred to herein as the lowest posted balances. The number of those balances appearing in the Richfield account varied from three to seven or eight each day. That number would depend upon the number of times the bookkeeper went through his ledger. These lowest posted balances were never given to the depositor.

Checks come from the clearing house to the bank twice a day, the first clearing being at 8:15 A. M. and the second at 11:15 A. M. They are sorted each time and given to the various bookkeepers for posting. Checks that come in over the counter at the bank are given to the bookkeepers for posting as early as 10:30 in the morning, but sometimes not until 2:30 in the afternoon. The bookkeepers begin posting immediately, but it is up to them when they will post a particular check. They have until 2:30 P. M. to return to the clearing house any check on which the bank intends to refuse payment, and the bookkeeper in posting checks, pays no attention to the order

in which the checks are presented to the bank nor to the order in which deposits are made at the bank.

The books are kept on bookkeeping machines, and each time the ledger sheet of a particular depositor is placed in the machine for the purpose of posting checks or deposits or both, the balance in the account must be recorded before the ledger sheet can be removed from the machine. As heretofore stated, sometimes three and sometimes as many as seven or eight of these balances would appear on an account such as Richfield's during one day.

The balances that appear during the course of the day do not necessarily show all of the checks on that account that have come to the bank, or all of the deposits to that account that have been made up to the time that balance appeared, nor do they show the time of day when such balances were made, nor do they show the order in which deposits were made or the order in which checks are presented during the course of the day. It would be possible for other checks against the account to have been presented for payment and other deposits to have been made to the account prior to the time when the balance in question was taken. But those checks and deposits would not be reflected in the particular balance either because they had not been passed on to the bookkeeper for posting or because they were not included in the particular group of checks upon which the bookkeeper was working at the moment.

The chief clerk of the Security-First National Bank was asked how the bank would handle a situation in which two checks for $100.00 apiece came to the bank in the morning's clearing at a time when the account on which they were drawn contained only $100.00. He

answered that payment might be refused on either one of the checks as there was no rule to determine which would be paid.

When the facts were changed slightly so that it was assumed that one check for $100.00 came through the clearing house at 8:15 in the morning, but before that check was posted in the ledger, another check for $100.00 was presented at the counter, the witness stated that the check presented at the counter would be paid first and payment of the check that came through the clearing house would be refused, even though it had been in the bank first.

In the event that a certified check is presented, a somewhat different procedure is followed. As soon as it is certified, a pencil notation of that fact is made upon the ledger and the bookkeeper considers that fact in his handling of all subsequent checks that are brought to him for posting. Before certifying a check, the bank examines the ledger account of the depositor to see if it contains sufficient funds to cover the check. If the account does not contain sufficient funds, the bank will examine the deposits made to the account, including deposits that have not been posted. If there have been sufficient deposits during the day, the bank will certify the check even though these deposits are not reflected in the posted balance in the ledger account.

With the above explanation, we here set forth under the caption of "Schedule A," a summarization of the evidence. Schedule B contains a detailed description of the parcels or assets referred to simply by parcel numbers in column six of Schedule A.

SCHEDULE A

(1) Date	(2) Universal Deposits	(3) Lowest Daily Closing Balances Between Takings of Universal Funds	(4) Lowest Posted Balances Shown on Bank's Books During any Day Between Takings of Universal Funds	(5) Lowest Balance Ascertained by Deducting From Opening Balance All Checks Cleared Each Day Before Crediting Deposits Made During the Same Day	(6) Property on Which Payments Were Made and Amount Paid on Such Property from said Bank Account	
1929						
Nov 13	$750,000.00					
" 19		$272,704.61	$209,198.80	$ 93,635.65		
" 27			198,719.90			
" 29					$ 50,000.00	Parcel 5
" 30					44,540.00	Parcel 2
" 30					500.00	Parcel 1
Dec 9					35,421.75	Parcel 9
" 23					164,746.20	Parcel 8
" 23					168,663.06	Parcel 7
" 23					190,914.94	Parcel 6
" 24				76,032.84 (red)		

"	31					49,385.00	Parcel	2
1930								
Jan	3					500.00	Parcel	1
"	3					50,000.00	Parcel	5
"	20	200,000.00						
"	23		466,764.36	466,764.36	336,646.20			
"	24				308,662.67			
"	27					500.00	Parcel	4
"	29					221,202.08	Parcel	10
"	29					50,000.00	Parcel	5
"	30					53,680.00	Parcel	2
"	30		464,148.47	462,088.47		500.00	Parcel	1
Feb	1		447,704.86	443,916.47				
"	15	500,000.00	(red)	172,136.10	222,642.41 (red)			
"	24		296,779.62	20,925.52	20,879.26			
"	25	100,000.00	252,760.24	122,941.84	128,412.10 (red)			
"	26			204,342.03	204,138.29			
"	27	100,000.00			272,948.76			

Mar	1				34,332.84	Parcel	3
"	1				48,000.00	Parcel	2
"	4			239,919.57			
"	5			203,185.63	10,625.00	Parcel	11
"	6			17,400.43			
"	8	209,201.80					
"	10		113,324.49				
"	12				50,000.00	Parcel	5
"	18		53,259.91				
"	22				7,500.00	Parcel	1
"	25				34,332.43	Parcel	3
"	28				50,000.00	Parcel	2
Apr	2				50,000.00	Parcel	5
"	3				500.00	Parcel	1
"	7				4,500.00	Parcel	4
"	16			8,520.06			
"	21				34,332.43	Parcel	3

SCHEDULE A (Continued)

(1)	(2)	(3)	(4)	(5)	(6)	
1930						
Apr 26					$ 50,000.00	Parcel 5
" 28					50,000.00	Parcel 2
May 5		$140,878.03			825.00	
Jun 6	$ 75,000.00			$ 114,164.03 (red)		
" 7		168,222.42				
" 18			$ 69,303.89			
" 21				122,078.81 (red)		
" 25					34,332.43	Parcel 3
" 27			45,336.49			
" 28					55,700.19	Parcel 2
Jul 14				1,679,420.83 (red)		
" 15					34,332.43	Parcel 3
" 17					50,000.00	Parcel 5
" 31					500.00	Parcel 1

SCHEDULE B

Description of Properties Upon Which Liens Are Claimed by Universal

PARCEL 1: Service Station located in the City of Los Angeles, County of Los Angeles, State of California, more particularly described as follows:

Lot twenty-eight (28) and the North half (N½) of Lot twenty-seven (27) of Croake & McCann's Gem of Hollywood Tract, as per map recorded in Book 6, page 28 of Maps in the Office of the County Recorder of Los Angeles County, known as the Franklin and Vermont Service Station.

PARCEL 2: 10 storage tanks, of which 5 are located on property known as the Hottenroth property adjoining the Rioco Refinery located at Long Beach, Los Angeles County, California, more particularly described as follows:

Lots twenty-four (24) and twenty-five (25) in Block 27 of the California Cooperative Colony Tract in the City of Long Beach, as per map recorded in Book 21, pages 15 and 16, of Miscellaneous records of Los Angeles County, California, excepting the west 30 feet thereof.

Five are located on property known as the Hunstock property adjoining said Rioco Refinery, and more particularly described as follows:

Lots 11, 12, 13, 14, 15, and 16 in Block 27, California Cooperative Colony Tract, except the east 30 feet thereof, conveyed to the Los Angeles Terminal Railway Company, as per map of said tract recorded in Book 21, at

pages 15 and 16, Miscellaneous Records in the office of the County Recorder of Los Angeles County.

PARCEL 3: Vapor Recovery Plant, located on the Watson Refinery site in Los Angeles County, California. (This Vapor Recovery Plant was constructed upon real property which was at the time of construction and now is, owned by Pan American Petroleum Company and subject to the trust indenture made by Pan American Petroleum Company to The Chase National Bank of New York and Bank of America as trustees to secure bonds of Pan American Petroleum Company.) More particularly described as follows:

Beginning at the North West corner of the land conveyed to the Pan American Petroleum Company by deed recorded in Book 1987 page 280 Official Records of said county in the easterly line of Wilmington Ave; thence along said easterly line north 34° 16′ 50″ East 964.82 feet; thence south 88° 55′ 40″ East 3240.90 feet to the westerly line of the tract of land conveyed to the Pan American Petroleum Company, by deed recorded in Book 2158 page 106 of said official records; thence along said westerly line south 17° 09′ 45″ west 323.91 feet to the North Easterly corner of the first above described tract of land conveyed to said Pan American Petroleum Company; thence along the northerly line of said tract of land south 53° 04′ 15″ west 805.68 feet; thence still along said Northerly line north 88° 55′ 40″ west 3044.65 feet to the point of beginning. Containing sixty (60) acres of land.

PARCEL 4: Real property known as the Mull property, located on Riverside Blvd. and Sutterville Road in the City of Sacramento, County of Sacramento, State

of California. For a more complete description see Receiver's Exhibit "F".

PARCEL 5: Certain leaseholds known as the Delany Producing property, located in Los Angeles County, California. For a more complete description of said property see Receiver's Exhibit "F".

PARCEL 6: Certain real property located in the City of Richmond, County of Contra Costa, State of California, used as a terminal and marine site by Richfield Oil Co., together with all buildings, machinery and improvements of every kind and character situated thereon or connected therewith. For a more complete description of said property see Receiver's Exhibit "F".

PARCEL 7: American Steel Tanker Pat Doheny. registered from Los Angeles, California.

PARCEL 8: American Steel Tanker Larry Doheny, registered from Los Angeles, California.

PARCEL 9: American Steel Tanker Kekoskee, registered from Los Angeles, California, which at all times herein mentioned has been owned by Richfield Oil Company, a California corporation.

PARCEL 10: 106,000 shares of stock of Universal Consolidated Oil Company, represented by the following certificates issued to Richfield Oil Company of California: No. LX26, February 13, 1930, 42,500 shares; No. LX27, February 14, 1930, 50,000 shares; No. LX28, February 14, 1930, 2,000 shares; No. LX32, March 10, 1930, 11,500 shares.

PARCEL 11: 5,100 shares of stock of Universal Consolidated Oil Company, represented by the following certificate issued to Richfield Oil Company of California: No. LX31, March 7, 1930.

The foregoing constitutes a statement of all the evidence necessary to be considered in the determination of these appeals.

FINDINGS AND CONCLUSIONS OF SPECIAL MASTER.

I.

REPORT ON CLAIM.

On May 26, 1933, said Special Master filed in the District Court of the United States for the Southern District of California, Central Division, his findings and conclusions on the claim of Universal Consolidated Oil Company set forth above, which are as follows:

"M's No.	R's No.	Claimant	Claimed	Allowed
2637	4622	Universal Consolidated Oil Company	$1,184,949.33 plus interest and $50.210.50 (Estimated)	$779,154.31 (subject to possible modification as below)

FINDINGS

Claim for $1,184,949.33, plus interest, unpaid balance on an account between claimant and Richfield Oil Company of California, and for a contingent amount estimated at $50,210.50, on account of the possible adverse result to claimant of claims pending and contemplated against it in reference to certain of the materials furnished claimant by Richfield appearing in the account between claimant and Richfield.

It is stipulated that the unpaid balance owing by Richfield to claimant is $1,183,148.23. Of this amount the Special Master has, by his Report filed May 26, 1933, in the matter of the Bill in Intervention of this claimant,

recommended the allowance of $403,993.92, as the aggregate of various items of money traced by claimant into specific properties, and the allowance and enforcement of a trust in such properties, respectively, for said items, respectively, in the aforesaid aggregate. The difference between said $403,993.92 and said $1,183,148.23 is $779,154.31. No evidence is presented in regard to the claim for the estimated sum of $50,210.50, and it is admitted by the claim, as filed, that it is purely contingent.

No reclamation, lien, or other preference is or can be claimed in reference to the net remainder of the unpaid balance here in question, for the reason that the fund containing the same was exhausted prior to receivership and no part of said fund came into the receiver's hands.

CONCLUSIONS

The claim should be allowed in the sum of $779,154.31, without interest. The contingent claim should be disallowed and the aforesaid amount should be allowed as the remainder of the agreed unpaid balance after deducting the portion which is represented by allowance recommended by the Special Master as a charge against specific properties.

In case the amount of the allowance, aggregating $403,-993.92, recommended by the Special Master as a charge against specific properties, under claimant's aforesaid Bill in Intervention, shall be finally increased or reduced by the court, the amount now recommended for allowance on this claim should be reduced by the amount of such increase, or increased by the amount of such reduction. Further, in case, on the sale of any specific property for the satisfaction of the charge thereon, as finally adjudged

by the court, under claimant's aforesaid Bill in Intervention, a deficit in the amount of such charge shall remain, the amount of the allowance on this claim, as aforesaid, should be increased by the amount of the deficit so resulting in each instance.

Claimant will be entitled to allowance of such deficit as part of its general claim, for the following reasons. In the case of each of the properties involved under its Bill in Intervention, if any trust money was invested, so also was money of Richfield. The case differs from one in which the property was acquired with trust money only. In that instance, the beneficiary, having his election either to take the property as representing his money or to hold the trustee personally, would, if he took the property, take it as wholly representing the money, and hence wholly in satisfaction thereof; and thereafter he might keep or sell the property at his own will, reaping for himself such profit as might ensue from the use to which he might put it as his own, and correspondingly submitting to any loss that might so ensue. But in the present case the beneficiary is not in that position. He cannot take the property as wholly representing the trust money and hence wholly in satisfaction thereof, because there is other money in it, as well as his own; and he is therefore compelled to transform the property back into money, in order to make the restoration of his original money effectual. This necessity was created by the faithless trustee, who of course will not be allowed to derive any advantage from it. Depreciation must be attributed to the trustee, and not to the beneficiary, where the lapse of time is due to the necessity, forced on the beneficiary, of fighting for his rights. The latter is chargeable with the restored money only

when he gets it, and that occurs when a sale of the property yields it; and he is chargeable only in the amount which is restored to him, which is the amount the sale yields. The fundamental reason is, that where the trust money is mixed with other money in a specific property, there must be another transformation, i. e., back into money, otherwise he has nothing but a naked and unprofitable right, nothing more, in effect, than he had before; while, where the trust money is not mixed with other money in the property, there need be no further transformation, he takes the property and there is an end and satisfaction. The deficit remaining in the former case, after restoration of only a portion of the trust money through a process necessitated by the trustee's misfeasance, remains an obligation of the trustee.

It is true that there may never be any deficit, and that the amount, if any shall accrue, is not now ascertainable; and a like siutation exists in reference to a possible modification of the allowance here by reason of a possible increase or reduction by the court of the amount recommended by the Master as a charge under claimant's aforesaid Bill in Intervention. The specific amount hereinbefore allowed, to-wit, $779.154.31, should therefore stand as the allowance, unless and until proof shall hereafter be presented of facts for the application of the aforegoing principles; and those principles should then be applied. Meanwhile, the receiver is entitled to rely and act on the specific allowance now made in the aforesaid specific amount, regardless of the possibility of modification.

Interest is disallowed for the reason that interest on an account starts only with demand, and there was no demand prior to receivership. The rule is discussed in detail in the Special Master's First Partial Report, on file.

page 239, re claim of Byron Jackson Co., Master's No. 537, Receiver's No. 727. California Usury Law (Stats. 1919, p. lxxxvii), repealing section 1917, Cal. Civil Code, and permitting interest only "after demand" on "the loan or forbearance of any money, goods or things in action or on accounts." Burks v. Weast, 67 Cal. App. 745, 752. Willett v. Schmeiser Mfg. Co., 82 Cal. App. 249, 254. Even before the repeal of section 1917, Cal. Civil Code, which was the statute covering interest on implied contracts, including accounts, interest was not allowable without demand, in the absence of a settlement of the account and an ascertainment of the balance (Heald v. Hendy, 89 Cal. 632, 635). As the part of the account here involved is placed on the mere ground of creditor and debtor, the rule regarding interest on accounts should be applied.

It cannot be said that a demand was impossible. Richfield's control of claimant's bank account did not necessarily extend to claimant's board. From the beginning, September 30, 1929, to December 19, 1929, Richfield had only a minority representation on the board, and a demand could easily have been ordered. From December 19, 1929, to March 18, 1930, Richfield had five of nine directors, and after March 18, 1930, six. The attendance of the minority, with the absence of two of the majority, would have enabled the board to order a demand. Even on a full attendance, only one vote from the majority at a meeting before March 18, 1930, and two votes from the majority, at a meeting thereafter, would have enabled the board to order a demand. It cannot be conclusively presumed that the one or two votes from the majority would have been lacking. It is not inconceivable that one or two of the majority directors might have been faithful to their duty, if the question of demand had been presented to

the board; at any rate, we cannot say in advance that all of the directors who represented Richfield would have violated their duty. We are not justified in predicting any particular attendance at any meeting, nor are we justified in predicting any particular action at any meeting, from the mere fact that certain directors, even a majority, were representatives of the stockholder concerned.

This view is fortified, I think, by the fact that, under the decisions, interest is not allowable even on trust money traced into a fund. First Nat. Bank v. Fidelity & Dep. Co., 48 Fed. (2d), 585, C. C. A. 9; Poisson v. Williams, 15 Fed. (2d) 582, D. C. E. D. N. Car.; Smith Reduction Corp. v. Williams, 15 Fed. (2d) 874, D. C. E. D. N. Car.; Butler v. Western German Bank, 159 Fed. 116, C. C. A. 5; Hallett v. Fish, 123 Fed. 201, C. C., D. Vermont; Richardson v. Louisville Banking Co., 94 Fed. 442, C. C. A. 3; Merchants' Nat. Bank v. School District, 94 Fed. 705, C. C. A. 9; Elizalde v. Elizalde, 137 Cal. 634, 638. If interest is not allowable to a cestui, whose position would naturally be regarded as of greater appeal than that of a mere creditor, its allowance to a creditor should not be based on surmise. If claimant had traced all its money into the hands of the Richfield receiver, it could have recovered no interest; and its relegation to an inferior position on the principal, by its failure to trace, should not give it superior position on the interest; certainly not without something more than conjecture as to what a board might do.

Heard April 5, December 21, 1932."

II.

REPORT ON BILL IN INTERVENTION.

On May 26, 1933, said Special Master filed in the District Court of the United States for the Southern District of California, Central Division, his findings and conclusions on the bill in intervention filed by Universal Consolidated Oil Company set forth above, which are as follows:

"In the District Court of the United States
Southern District of California
Central Division

Security-First National Bank of Los Angeles, a national banking association, as trustee, Plaintiff, vs. Richfield Oil Company of California, a corporation, and William C. McDuffie, as Receiver of Richfield Oil Company of California, a corporation, Defendants.	
Universal Consolidated Oil Company, a California corporation, Intervenor.	In Equity Consolidated Cause No. S-125-J

The Republic Supply Company of California, a corporation,	)
Complainant,	)
vs.	)
Richfield Oil Company of California, a corporation,	)
Defendant.	)

Report of Special Master on Bill in Intervention of Universal Consolidated Oil Company

To the Honorable the District Court of the United States, in and for the Southern District of California, Central Division, and to the Honorable William P. James, Judge thereof:

WILLIAM A. BOWEN, Special Master appointed herein for the purpose of hearing and passing upon the bill in intervention of Universal Consolidated Oil Company, a California corporation, respectfully reports as follows:

Pursuant to the order of reference, the hearing on said bill in intervention was consolidated with the hearing on the claim of said corporation, Master's No. 2637, Receiver's No. 4622, filed against the receivership estate of Richfield Oil Company of California, and the report of the Special Master on said claim is submitted separately as a part of his report upon claims in said receivership estate, his findings therein being in consonance with the findings herewith reported on said bill in intervention.

The bill seeks, in effect, reclamation of various pieces of property by reason of the alleged tracing into each of said pieces of property of money of the intervenor alleged to have been misappropriated by Richfield Oil Company of California; and the reclamation is sought to be enforced by the declaration of a trust in each of said pieces of property in the amount of the money traced into the same and by the application of the proceeds of any sale herein of each of said pieces of property to the satisfaction of the intervenor's aforesaid interest. It is claimed that this interest, resting in prior and exclusive ownership, precedes any asserted interest on the part of Richfield Oil Company of California, its receiver, the holders of its bonds, and the trustee of its bond issue. Interest is claimed on the several amounts alleged to have been misappropriated and traced.

Two questions of mixed fact and law are presented:

First, whether the transaction between intervenor and Richfield Oil Company of California was a misappropriation by the latter or a bona fide loan to it; and second, if a misappropriation, whether and to what extent the moneys are traced into specific properties.

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The allegations of paragraphs I, II, III, and VI of the bill in intervention are admitted by the pleadings, except that the final allegation of paragraph III, charging that the alleged property is held in trust for the intervenor and is subject to its prior right, is in dispute. The facts involved in the disputed allegations on both sides are found as follows.

FINDINGS OF FACT

–I–

ON THE QUESTION OF MISAPPROPRIATION OR LOAN

The business of intervenor, hereinafter called Universal, was oil production; it had no refinery or pipe lines or marketing facilities. In 1925, again in 1928, and again in 1929, Richfield Oil Company of California, hereinafter called Richfield, investigated Universal's properties. At one time Richfield's production manager advised the chairman of the Richfield board that it would be well to acquire Universal's property in Lost Hills because of Richfield's properties in that section. No action was taken prior to the report of 1929. No additional property had been accumulated meanwhile by Universal. About the time of the 1929 investigation, which was completed in the latter part of July, 1929, Richfield's production manager and the chairman of its board discussed the possibility of development of the Lost Hills field. Later on there were conversations between the chairman of the Richfield board and one of its directors who was active in negotiating the purchase of stock in Universal, in which conversations it was stated that Universal was a fine producing company, that Richfield needed it as a complement to its own production, and that the cash position of Universal was a very nice cash position for a subsidiary company to have if it could be acquired by Richfield; and something was said about the fact that Richfield could advance some of that money to itself.

In August, 1929, there were outstanding of Universal's stock 358,103.8 shares of the par value of $10.00 each, (the stock was originally of $1.00 par value, making

3,581,038 shares, but all references herein are based on a par value of $10.00).

By written agreements dated August 13, 1929, Joe Toplitzky, who was a director of Richfield, agreed to buy from William H. Crocker 167,000 shares of Universal stock, Crocker to deliver to Toplitzky forthwith the resignations of the president and the majority of the directors of Universal, effective at the will of Toplitzky; and the resignations of their successors to be deposited in escrow to be delivered to Crocker on default in payment of the purchase price, and the corporation, until payment of the purchase price in full, not to dispose of any of its assets or incur any liabilities, except in the usual course of business, nor to declare or to pay any dividends, but to maintain its present office and office and field personnel and to continue its present drilling and development program; and Richfield agreed to buy from Toplitzky up to 47,000 shares in the same ratio as the aggregate number of shares which might be taken down by Toplitzky out of the remaining 120,000 shares should bear to said 120,000 shares; and as to said 120,000 shares, the said Toplitzky, Herbert Fleishhacker and R. W. Hanna formed themselves into a syndicate, with Toplitzky as manager, for the purpose of taking down said 120,000 shares and selling or retaining the same, Toplitzky, as manager, to have exclusive power to determine when to sell the stock and in what amount, and Richfield to be paid 25% of all profits realized by the operation of the syndicate. By agreement dated January 28, 1930, Richfield agreed to buy from Toplitzky 106,000 shares.

On September 27, 1929, Richfield paid to Herbert Fleishhacker, by check, $822,500.00, in payment for 47,000 shares of Universal stock. On January 29, 1930,

Richfield gave Toplitzky its check for $221,202.08, and 70,666 shares of its stock, in payment for 106,000 shares of Universal stock. On March 5, 1930, Richfield gave Tucker Hunter-Dulin Company its check for $10,625.00, and 3400 shares of its stock, in payment for 5,100 shares of Universal stock. The first mentioned 47,000 shares of Universal stock were not reissued in the name of Richfield until July 29, 1930, but on or about September 27, 1929, Richfield held endorsed certificates for the same, and was accordingly the unrecorded owner of 13.12% of the 358,103 shares outstanding. The aforesaid 106,000 shares were not reissued in the name of Richfield until later, as follows: 42,500 on February 13; 52,000 on February 14; and 11,500 on March 10, 1930; but on or about January 29, 1930, Richfield held endorsed certificates for the same, and was accordingly the unrecorded owner of 153,000 shares, or 42.73% of the outstanding stock. The aforesaid 5,100 shares (paid for on March 5, 1930) were reissued in the name of Richfield on March 7, 1930, and Richfield was accordingly on the latter date the owner of 158,100 shares, recorded and unrecorded, or 44.15% of the outstanding stock. Subsequently Richfield acquired additional stock, to the effect that on the following dates in 1930 it owned stock, recorded and unrecorded, in the following percentages of the whole issue: April 3, 44.52%; April 17, 44.52%; May 22, 51%; and on August 19, 52.16%, amounting to 186,778 shares, its ultimate holding. These shares have since been transferred to Security-First National Bank of Los Angeles, as trustee under the Richfield bond indenture.

The minutes of Universal show as follows:

September 30, 1929, directors' meeting: Talbot, who was chairman of the board of Richfield, was elected a director and president in place of Bishop, resigned. Fuller, who was president of Richfield, was elected a director in place of Crocker, resigned. Tucker, who was a director of Richfield, was elected a director in place of Harrison, resigned. Melvin, who was secretary, vice-president, and general counsel of Richfield, but not a member of the board, was elected a director in place of Long, resigned, and was also elected vice-president. Charlesworth, who was secretary to Melvin in the Richfield organization, and was an assistant secretary of Richfield, was elected assistant secretary. The articles were amended transferring the principal place of business from San Francisco to Los Angeles, and increasing the par value of the stock from $1.00 to $10.00. Any two of the following were authorized to sign checks on the Bank of America, on the Crocker First National Bank of San Francisco, and on the Anglo & London Paris National Bank: Melvin, vice-president; Long, secretary-treasurer; Charlesworth, assistant secretary; R. W. McKee (who was assistant to Talbot in the Richfield organization), and J. S. Wallace (who was a vice-president of Richfield but not a member of its board). The board of Universal was then composed of four members who were also connected with the Richfield organization and five members who remained in office from the old board. Long, who had been secretary-treasurer of Universal since 1922, remained as such until May, 1931, being then succeeded by Wallace.

December 19, 1929, directors' meeting: Dunlap, who was a vice-president and a director of Richfield, was elected a director in place of Phleger, resigned, and Noyes was

elected a director in place of Murphy, resigned. The board of Universal then consisted of five members who were also connected with the Richfield organization and four members who were not connected with that organization.

March 18, 1930, directors' meeting: McKee, who was assistant to Talbot in the Richfield organization, was elected a director in place of Noyes, resigned. The board of Universal then consisted of six members who were also connected with the Richfield organization and three members who were not.

April 4, 1930, directors' meeting: A dividend was declared in the sum of 50¢ per share of the par value of $10.00, payable April 30, 1930, to stockholders of record April 15, 1930. Stearns or Coffey or Hudson or Mason or Long was each authorized to sign checks and drafts on the Los Angeles-First National Trust & Savings Bank, Los Angeles, to be valid when signed by any one of them. Wallace, McKee, Hess, and Long were authorized to sign checks on the payroll account with the Citizens National Trust & Savings Bank, Los Angeles, to be valid when signed by any two. A resolution was adopted approving an agreement dated February 26, 1930, between Richfield and Universal, signed by Wallace, vice-president, and Wilson, assistant secretary, for Richfield, and Stearns, vice-president, and Long, secretary, for Universal, in relation to the drilling and operating by Universal of property of Richfield in Santa Barbara county.

April 15, 1930, annual stockholders' meeting: Held at the principal place of business, 555 South Flower Street, Los Angeles. Present in person, 1080 shares; by proxy, in the names of Talbot, Fuller, Melvin, Stearns, and Dun-

lap, 257,414 shares; by proxy, in the name of Newberger, 1430 shares; by proxy, in the name of Montgomery, 100 shares; making a total of 260,024 shares out of a total of 358,103 shares outstanding. The acts of the board and officers as the same appear in the books and records of the corporation were in all respects ratified and approved as the acts and deeds of the corporation. The president, Talbot, presented his annual report, in writing, stating that copies would be mailed to all stockholders. Stearns made reports about the operations in the various fields. The following board was elected: Cameron, Farnsworth, Stearns, Dunlap, Fuller, Melvin, McKee, Talbot, and Tucker. The board then consisted of six members who were also connected with the Richfield organization and three members who were not.

April 15, 1930, directors' meeting: Present: Stearns, Farnsworth, McKee, Melvin, and Talbot. Talbot was elected president, Fuller vice-president, McKee, vice-president, Melvin, vice-president, Stearns, vice-president, Long, secretary-treasurer, and Charlesworth, assistant secretary.

June 30, 1930, directors' meeting: A resolution was adopted approving an agreement dated May 1, 1930, between Richfield and Universal, executed by Wallace, vice-president, and Wilson, assistant secretary, for Richfield, and Stearns, vice-president, and Long, secretary, for Universal, relating to the drilling of the property of Richfield in the Inglewood District, Los Angeles county. A resolution was adopted ratifying agreements dated May 9, 1930,

with Richfield for the sale of gas and casing head gasoline produced from certain properties in the Inglewood district, the same being signed by Stearns, vice-president, and Long, secretary, for Universal. Cameron resigned as a director.

September 23, 1930, directors' meeting: A resolution was adopted ratifying an agreement dated September 18, 1930, with Signal Hill Gasoline Company (which was a subsidiary of Richfield) for the sale of natural gas from property in the Kettleman Hills field, the same being signed by Stearns and Long for Universal.

Prior to the meeting of September 30, 1929, the business office of Universal was in San Francisco. Following that meeting it was removed to Los Angeles. McKee advised Long, who was and had been secretary and treasurer of Universal, that he was privileged to come to the Los Angeles office, which he did. Stearns, one of the original Universal directors, was the original field manager of Universal and remained in that capacity after Richfield acquired the Universal stock.

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Between January 15, 1929, and September 14, 1929, Universal loaned in New York on call various amounts aggregating $1,500,000.00, and this aggregate sum was outstanding on call loans on the latter date. These loans were afterwards called in full, and the proceeds were deposited in Universal's bank account as follows: $1,100,000.00 during October, 1929, $200,000.00 in Novem-

ber, 1929, and $200,000.00 on January 20, 1930, making in all $1,500,000.00.

In February, 1929, Universal loaned to Provident Loan Association $200,000.00 on its note, and this note was paid in full in October, 1929, and the proceeds were deposited in Universal's bank account.

Universal carried a ledger account of "call loans", which account shows loans made in New York as above stated, and shows the withdrawals and deposits aggregating $1,500,000.00, as aforesaid. The Provident Loan note for $200,000.00 was set up on Universal's books in a note receivable account.

After the initial acquisition of Universal stock by Richfield, so much of the aforesaid moneys as was in the Crocker First National Bank was transferred to the account of Universal in the Bank of America or in the Anglo & London Paris National Bank. The withdrawal of the aforesaid call loan money from the New York market was ordered by Talbot and the depositaries thereof were selected by him. The money was recalled from New York by McKee under instructions from Talbot, and McKee directed Long, who was secretary of Universal, to effect the withdrawal. Long accordingly instructed the Crocker First National Bank of San Francisco, which bank had originally transmitted the money to New York, to effect the recall thereof, and the bank did so. Zanzot, who had been in charge of the book accounts of Universal since 1923, made the entries on the books in reference to the recall of the money from New York.

Checks were drawn on the Universal bank accounts in favor of Richfield as follows:

Date	Amount	Signatures	Drawee Bank
Nov. 13, 1929	$350,000.00	Long and McKee	Bank of America of California (Los Angeles)
Nov. 13, 1929	400,000.00	Long and McKee	Anglo & London Paris National Bank of San Francisco
Jan. 20, 1930	200,000.00	Long and McKee	Bank of America of California
Feb. 15, 1930	250,000.00	Long and McKee	Bank of America of California
Feb. 15, 1930	250,000.00	Long and McKee	Anglo & London Paris National Bank of San Francisco
Feb. 25, 1930	100,000.00	Long and Charlesworth	Bank of America of California
Feb. 27, 1930	100,000.00	Long and McKee	Bank of America of California
June 6, 1930	75,000.00	Long and Charlesworth	Bank of America of California

All of the aforesaid checks were deposited by Richfield in its general bank account in Security-First National Bank of Los Angeles.

On February 17, 1930, Richfield, by check on Security-First National Bank of Los Angeles, repaid to Universal $100,000.00 of the moneys represented by checks of Universal made prior to that date as aforesaid, and said check of Universal for $100,000.00 was deposited in the Bank of America of California at Los Angeles to the credit of Universal. No other payment has been made by Richfield to Universal on account of the moneys rep-

resented by the aforesaid checks of Universal. The net aggregate of said checks, after allowing credit for said $100,000.00, is $1,625,000.00. On April 15, 1930, Richfield gave its check to Universal for $600,000.00 on account of the aforesaid moneys, but later, on the same day, Universal gave its check to Richfield in the same amount, thus leaving the account unchanged.

No note was ever given by Richfield to Universal for any of the moneys represented by the aforesaid checks of Universal, nor was any security given in connection therewith. No resolution was ever adopted by the Board of Directors of Universal authorizing or ratifying the issuance of said checks to Richfield, nor is there any resolution in the minutes of Universal from September 30, 1929, to the time of the appointment of the Richfield receiver, January 15, 1931, authorizing any loans to Richfield, or authorizing any officer of Universal or any one else to loan any of the Universal money to anybody. Just before the first meeting of the Universal board, after the first passage of said money to Richfield, Long, secretary of Universal, stated to McKee the program that should be taken up at the meeting and among other things that the transfer of said money to Richfield, which he designated as a loan, should be ratified by the board; to which McKee replied that Talbot would handle it. The matter was not brought up at the meeting. Long was not called in at any of the directors' meetings of Universal for the purpose of giving advice with respect to the accounts.

Talbot determined the time and amounts which passed from Universal to Richfield and gave directions to McKee to cause the moneys to be transferred from Universal to Richfield. McKee passed these instructions along to

Long, who was secretary and treasurer of Universal, and had been secretary and treasurer thereof since 1922. Long directed Zanzot, who was in charge of the Universal books and had been in charge thereof since 1923, to prepare the checks and make the entries and how the entries should be made on Universal's books. Zanzot drew the checks and made the entries on Universal's books.

At the time of the passage of the money from Universal to Richfield, Lyons was in charge of the Richfield books acting under McKee's supervision, and McKee knew that entries were made at the time on the Richfield books, and that like entries were made on the Universal books. McKee gave direction for the entry in the Universal books by way of a charge against Richfield on open account.

Long testifies that at the time when he suggested to McKee that the first transfer of money be ratified by the Universal board, he regarded it as a loan. Zanzot testifies that when Long and himself spoke of this account between themselves, he always understood it to be a demand account, that the money was payable back to Universal on demand, that he recalls no discussion of it as anything other than a loan demand account at the time, and that he never understood that it was anything other than that in his accounting work.

In transferring the money to Richfield, the practice was to draw a voucher check, enter the check in the voucher record, and post that to the ledger account. The caption of the account with Richfield in the Universal ledger was "Accounts receivable—Richfield Oil Company of California." This account reflects all of the money in question, but it does not reflect all of the charges to Richfield.

There was also a field ledger account, which took care of materials and the like sold to Richfield. A ledger account headed "Richfield Oil Company of California—Current Account' starts with December 31, 1929, and brings forward the balance of charges from the ledger account entitled "Accounts receivable—Richfield Oil Company of California" on December 31, 1929.

The Universal ledger account entitled "Accounts receivable—Richfield Oil Company of California" charges to Richfield three items amounting to $775,000.00 on November 12 and 13, 1929, (which comprises the two checks of November 13th aggregating $750,000.00, plus a check of November 12th for $25,000.00, which latter check is not involved here), and charges interest on November 30, 1929, amounting to $1879.16. The entries credit on January 3, 1930, $1879.16 (representing payment of said interest), and on February 17, 1930, $100,000.00 (representing payment in that amount on principal as above mentioned). The entries charge on January 20, 1930, $200,000.00, on February 15, 1930, $500,000.00, on February 25, 1930, $100,000.00, and on February 27, 1930, $100,000.00, (representing moneys transferred from Universal to Richfield, as aforesaid). The entries charge interest as follows: January 31, 1930, $3278.13; February 28, 1930, $3907.65; March 31, 1930, $5425.00.

In the Universal ledger account "Richfield Oil Company of California—Current Account", which starts with December 31, 1929, and brings forward the balance of charges from the account last above mentioned, the entries of the last day of each month charge the following: January 31, 1930, check register $200,000.00 (which is the money which passed on January 20, 1930); February 28, 1930, check register $700,000.00 (which represents the

money which passed on January 20, February 15, and February 25); and April 30, 1930, check register cash advance $600,000.00 (which represents a check of April 15, given by Universal to Richfield in exchange for Richfield's check of that amount on that day).

Richfield kept a ledger account with Universal headed "Universal Consolidated Oil Company—Current Account." This account shows charges, credits, and balances on the last day of each month. On November 30, 1929, it shows a balance in favor of Universal in the sum of $741,471.23. On January 31, 1930, it shows a balance in favor of Universal in the sum of $942,531.33. On February 28, 1930, it shows a balance in favor of Universal in the sum of $1,566,626.46. On June 30, 1930, it shows a balance in favor of Universal in the sum of $1,598,434.97. On January 14, 1931, the day before the appointment of the Richfield receiver, it shows a balance in favor of Universal in the sum of $1,248,-937.82. The credits to Universal in this account include the sums which passed as aforesaid from Universal to Richfield.

The following appear with reference to interest:

December 1, 1929, invoice of Universal to Richfield interest on $750,000.00 at 5 1/8% per annum, November 13 to 30, 1929, $1815.10. OK G.P.L. (This is G. P. Lyons, who was in charge of the Richfield books).

December 1, 1929, invoice of Universal to Richfield for interest on $25,000.00 at 5 1/8% per annum, November 12 to 30, 1929, $64.06. OK G.M. (This item of $25,-000.00 is not one of the items directly in question here).

December 31, 1929, invoice of Universal to Richfield interest on $750,000.00 at 4 3/8% per annum, November 30 to December 31, 1929, $2825.52. OK C.T. Hancock.

December 31, 1929, invoice of Universal to Richfield interest on $25,000.00 at 4 3/8% per annum, November 30 to December 31, 1929, $94.18. OK C.T. Hancock. (This item of $25,000.00 is not one of the items directly in question here).

January 2, 1930, check from Richfield to Universal for $1879.16 on First National office of Security-First National Bank of Los Angeles.

January 2, 1930, voucher of Richfield for the aforesaid check audited by B. C. with memo as follows: 12/1 interest on $750,000.00 November 13 to 30, 1929, $1815.10; 12/1 interest on $25,000.00 November 12 to 30, 1929, $64.06; total $1879.16.

January 31, 1930, invoice of Universal to Richfield interest on $750,000.00 at 4½% per annum December 31, 1929, to January 31, 1930, $2906.25. OK Hancock.

January 31, 1930, invoice of Universal to Richfield interest on $25,000.00 at 4½% per annum, December 31, 1929, to January 31, 1930, $96.88. OK Hancock. (This item of $25,000.00 is not one of the items directly in question here).

January 31, 1930, invoice of Universal to Richfield interest on $200,000.00 at 4½% per annum, from January 20, 1930, to January 31, 1930, $275.00. OK Hancock.

March 1, 1930, invoice of Universal to Richfield, ok'd by Hancock, for interest at 4½% per annum as follows:

$750,000.00	Jan. 31 to Feb. 28	$2479.17
200,000.00	Jan. 31 to Feb. 28	661.11
500,000.00	Feb. 15 to Feb. 28	767.36
100,000.00	Feb. 25 to Feb. 28	35.42
100,000.00	Feb. 27 to Feb. 28	11.81
	Total	$3954.87
Less interest on $100,000.00 Feb. 17 to Feb. 28		129.86
	Balance	$3825.01

March 1, 1930, invoice of Universal to Richfield interest on $25,000.00 at 4¼% per annum, from January 31 to February 28, 1930, $82.64. OK Hancock. (This item of $25,000.00 is not one of the items directly in question here).

March 31, 1930, invoice of Universal to Richfield interest on $1,575,000.00 at 4¼% per annum, February 28 to March 31, 1930, $5425.00; with query signed J.A.T. as follows: "Mr. Santler is it ok?".

March 31, 1930, invoice of Universal to Richfield for interest on advances $1,575,000.00 from February 28, 1930, to March 31, 1930, at 4% per annum, $5425.00. OK J.A.T. (J. A. Thompson of the Richfield organization).

April 30, 1930, invoice of Universal to Richfield interest on $1,575,000.00 at 4% per annum from March 31, 1930, to April 30, 1930, $5250.00. Mr. Perrin.

Universal's ledger sheet headed "Accounts Receivable Richfield Oil Company of California" charges interest on

November 30, 1929, amounting to $1879.16 on three items of November 12 and 13, 1929, aggregating $775,000.00, and credits on January 3, 1930, $1879.16, and charges further interest as follows: January 31, 1930, $3278.13; February 28, 1930, $3907.65, and March 31, 1930, $5425.00.

Universal's ledger account "Richfield Oil Company of California—Current Account" shows interest charges on the last day of each month in 1930, commencing January 31 and ending December 31.

The charging of interest against Richfield on the transactions involved here was dictated to Long, Universal's secretary and treasurer, by McKee and Long gave instructions accordingly to Zanzot, Universal's bookkeeper. Long told Zanzot to use the average New York call rate and to bill Richfield accordingly. That interest rate was computed at certain intervals on this account on the Universal books and statements to that effect were rendered to Richfield. The only check for interest on the transaction involved here was the check given by Richfield on January 2, 1930, for $1879.16, which paid interest as charged on the Universal books to November 30, 1929, on the two items of November 13, 1929, aggregating $750,000.00, and on an item of $25,000.00 on November 12, 1929. Universal's counsel stated at the hearing: "We will concede that under the instructions of Mr. McKee they asked for interest."

The accounts between Universal and Richfield show numerous financial and commercial transactions from November, 1929, to the date of the appointment of the Richfield receiver, January 15, 1931, in addition to the transactions here in question. The Universal ledger account

headed "Accounts Receivable Richfield Oil Company of California" from November 12, 1929, to December 31, 1929, and its account headed "Richfield Oil Company of California—Current Account" transferring the balance in the first named account on December 31, 1929, and running to and beyond the date of the appointment of the Richfield receiver, contain numerous charges against Richfield apart from the charges of principal and interest here particularly in question, for cash, interest, revenue stamps, oil, gas, gasoline, invoices, labor, power, and the like, and numerous credits to Richfield apart from the item of interest and the items of $100,000.00 and $600,000.00 on principal in the transaction here in question, for cash, compensation insurance, other insurance, sundry debit advices, and other items posted from the journal. The total charges in these accounts amount on January 14, 1931, to over two and three quarter million, and the total credits on that date amount to over a million and a quarter. In addition to the money in question here, Richfield is charged with cash on November 12, 1929, $25,000.00, on June 10, 1930, $28,000.00, on June 17, 1930, $5,000.00, on August 14, 1930, $95,000.00. In addition to the $100,000.00 paid on February 17, 1930, on the account here in question, and the $600,000.00 exchange on April 15, 1930, Richfield is credited commencing about July 15, 1930, and ending about October 11, 1930, with cash repaid by it as follows: July 15th, $50,000.00; July 18th, $25,000.00; July 18th, $37,000.00; July 24th, $20,000.00; August 19th, $40,000.0; August 25th, $20,000.00; September 3rd, $15,000.00; September 10th, $20,000.00; September 11th, $5,000.00; September 18th, $15,000.00; September 27th, $20,000.00; October 2nd, $15,000.00; October 11th, $5,000.00. On January 10, 1931, Richfield is

credited with an additional payment of $11,000.00. While Richfield was paying back the aforesaid items from July 15, 1930, to October 11, 1930, amounting to the sum of $287,000.00, it was receiving from Universal the sum of $128,000.00. It is agreed on both sides that after allowing Richfield all the credits to which it is entitled and charging it with all proper charges, including the moneys which passed from Universal to Richfield here in question, an unpaid balance remains on Richfield's part in favor of Universal on the whole account in the sum of $1,183,148.23, exclusive of interest.

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An annual meeting of Universal's stockholders was held on April 15, 1930, at 2 o'clock P. M. at 555 South Flower Street, Los Angeles. On the morning of that day, before the meeting, a Richfield check to the order of Universal for $600,000.00 was signed by Wallance and Long on the First National office of the Security-First National Bank of Los Angeles. A request for this check was signed on said date by Perrin, disbursement auditor of Richfield, and approved by Thompson of the Richfield organization, addressed to Gallagher "To have check drawn in favor of Universal for $600,000.00 and delivered to L. E. Long RUSH." On the same day a voucher was approved by Perrin "Richfield to Universal 4/15 debit $600,000.00, balance $600,000.00, account 386."

On said morning, Long handed said check to Zanzot, the bookkeeper of Universal, and asked the latter to deposit it. The check was accordingly deposited in the Bank of America of California, at Los Angeles.

In the afternoon of the same day, Long instructed Zanzot to draw a Universal check for $600,000.00 in favor of

Richfield. He did so and gave it to Long to have it signed and delivered to Richfield. This check was signed by Long and McKee and deposited in the Richfield bank account.

On the morning of April 15, 1930, before Universal received the last mentioned check for $600,000.00 from Richfield, the balance of cash on hand in Universal was $372,977.14.

The report dated April 8, 1930, signed by James A. Talbot, President, which was presented to the meeting of the stockholders of Universal on April 15, 1930, states that "During the year Richfield Oil Company of California acquired 51% of the outstanding stock of this corporation on account of the company's future production potentialities", and contains a balance sheet as at December 31, 1929, of Universal Consolidated Oil Company and its subsidiary (Lost Hills Water Company, wholly owned) and consolidated profit and loss account for the year ended December 31, 1929, of said company and its subsidiary, and consolidated surplus accounts of said company and its subsidiary, with a certificate of Peat Marwick, Mitchell & Co., Accountants and Auditors, dated April 1, 1930. The balance sheet shows among the assets Demand Loans in the sum of $769,539.72, Cash in banks and on hand $989,077.67, and Call Loans in the sum of $200,000.00.

The last previous report of Universal dated October 8, 1929, and signed by James A. Talbot, President, being for the nine month period ended September 30, 1929, states: "The company is in a very strong financial position, with current assets of $2,100,000.00, $1,400,000.00 of which is in cash. The ratio of current assets to cur-

rent liabilities is approximately eight to one. Control of the company has recently passed to Richfield Oil Company of California and a group of substantial San Francisco and Los Angeles investors. Management of the company's affairs is in the hands of the executive officers of Richfield Oil Company of California, the field operations being continued under the capable management of Mr. Edward Stearns, who has been in charge of field operations of this company for many years." The only financial statement with this report is an uncertified profit and loss account for said nine months.

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Fuller, Dunlap, Talbot, Melvin, and McKee were familiar at the time with the fact that Richfield was using money from Universal; it was discussed in a general way from time to time by the officers of Richfield. The Universal directors' meetings were perfunctory and the matter was not discussed at such meetings. McKee knows of no instance of any information being given to any of the directors of Universal who were not Richfield's nominees, or to any of the stockholders of Universal, that Richfield had any of Universal's money.

Stearns, who was production manager of Universal since 1913 and a director, first learned about the transactions in question here about the time of a meeting of the Universal board on September 23, 1930, which was called for the purpose of declaring a dividend. Long told Stearns at that time that they had no money with which to pay the dividend, and on Stearns' asking where the money was, Long said that Richfield had drawn it out and put it in its account. After getting this information from Long, Stearns spoke to Melvin about it and also

to Farnsworth, who was a director of Universal, but not of Richfield, and it was proposed to consult an attorney in order to ascertain whether a director who did not know about the transaction would be responsible. This matter was dropped without any action. Stearns was present at the Universal stockholders' meeting of April 15, 1930, and saw the annual report hereinbefore referred to. He does not know whether he noticed the item of "Demand Loans $769,539.72." He did not ask any one as to whom that money had been loaned. He does not recall any discussion at all on that subject at the stockholders' meeting.

Long at one time received a letter from a stockholder named L. H. Van Wyck, inquiring as to what had become of the large amount of cash held by Universal. Long did not give him the information. Long does not recall any letters from any other stockholders to that effect.

About the middle of January, 1930, R. L. Bryner, representing a stockholder of Universal, applied to McKee, who sent him to Long, and Bryner gave Long a list of things he wanted to know. Long shortly after gave him a statement answering all of the questions as to production and the like and a statement of the financial condition of Universal as of that approximate date. This statement showed accounts receivable $21,000.00, notes $3,250.00, cash on hand $986,035.00, and "call—1 day notice $1,025,000.00." Bryner asked Long if the last mentioned $1,025,000.00 was in the call money market and Long said "No." Bryner asked him where the money was and Long said the information would have to be obtained from McKee. Bryner applied to McKee, who put him off, and subsequently Bryner gave Melvin a letter demanding to see the books of Universal. Melvin said he saw no reason why Bryner could not see the books and asked what

Bryner wanted to know chiefly, to which Bryner replied that he wanted to know where this million and odd dollars was. Melvin said that he would take the matter up with McKee and Talbot. In about a week Melvin told Bryner that McKee had instructed him not to let Bryner see the books, and that as there were only fifty shares standing in Bryner's name, they did not deem that sufficient to warrant his seeing the books of the company. Bryner did not see the books and was not informed as to who had the million dollars. He did not ascertain that until after the receivership of Richfield. Bryner, at the time of his interview with Melvin, had only fifty shares standing in his name, but he had 1700 shares besides with a broker. He wanted to know whether he should increase his holdings as he was trading in that stock all the time. He did not have any stock in his name at the time of his first application to McKee and Long. He acquired the 50 shares in the early part of February, 1930, between his first application and his interview with Melvin. He acquired those 50 shares solely for the purpose of going into the company and saying he was a stockholder of record.

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The following are the facts in reference to the practice of Universal in making loans, prior to September, 1929. The Crocker First National Bank of San Francisco transmitted the money to New York. Long sometimes instructed the Bank to transmit the funds and Ray Bishop, President of Universal, sometimes instructed the Bank. Long instructed the Bank under directions received by him. He was thoroughly familiar with all of the facts with regard to all loans which Universal ever made while

he was treasurer. They were all made by Bishop, the President, who also acted as general manager of Universal until his resignation, and they were recorded on the books as call loans, crediting cash and charging the call loan account. There was never any resolution by the board of Universal authorizing any of the previous loans made by Bishop or by Long. The practice was that Bishop or Long took action and reported later to the board. No one but Bishop and Long was active in the actual management outside of the field work. Stearns was superintendent in the field.

Stearns does not know what was done about loans during the two years before 1930. He knows that money was loaned in New York, but he did not know any of the particulars or anything about it. He does not know what the practice of Universal was with regard to whether or not it made resolutions in connection with the making of company loans because he never had much connection with the business end of it. He was engaged principally in looking after the operations in the field. The only case he knows of in regard to loaning money was the loaning of money in New York, but he does not know about that directly but only by hearsay. He does not know the amount involved nor whether any resolutions were passed by the board concerning those loans; no resolutions thereon were made at any meeting attended by him. There were a good many meetings which he did not attend. He was in the field most of the time. No resolutions concerning any loan to anybody were made at any meeting which he attended.

Regarding the practice in making loans after September, 1929, there was only one loan apart from the money that went over to Richfield. This loan was made to one Bachman for $50,000.00 on instructions from McKee. The loan was entered in the books and a note was taken. There was no resolution of the board authorizing or approving the loan. The Bachman loan was made before Richfield acquired all of its stock.

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After the call loans were withdrawn and the money passed to Richfield, Universal was not in any activity that required the use of that amount of money. It was surplus cash that would have to be invested. It is true that Universal had requirements for cash in its operations up to the date of the Richfield receivership inasmuch as it was drilling wells and had an operating payroll, but it had sufficient funds for that purpose, except that at one time it was unable to meet its payroll or discount its bills and Long made demand on Richfield for funds and received a portion of what he asked for. Universal's operations were not interfered with, however, for lack of cash to meet payrolls and operating expenses.

Dividends were regularly declared by Universal. The quarterly dividend declared on September 30, 1929, was paid out of its own funds, but the next quarterly dividend amounting to $178,000.00 at 50¢ per share was paid by calling on Richfield to repay Universal some of the money and by crediting Richfield's account on the books for the

amount of its dividend. At the meeting on September 23, 1930, which was called for the purpose of considering the declaration of a dividend, the chairman recommended that no dividend be declared, and no action thereupon was taken for the reason that the company's funds on hand were insufficient for the payment of a dividend.

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Richfield was at various times able to borrow money from local banks to the extent of millions of dollars without security. The maximum of Richfield's bank loans at the time in question was about $10,300,000.00 and Richfield's highest loan with Security-First National Bank of Los Angeles was about $2,250,000.00, all unsecured. It does not appear whether or to what extent the loans in these amounts originated during the period in question here.

At the opening of the bank on November 13, 1929, Richfield had a deposit balance with Security-First National Bank of Los Angeles in the sum of $1,157,755.05. From November 13, 1929, to January 14, 1931, Richfield deposited in said bank account from sources other than Universal the sum of $81,903,908.39. Its deposits in said bank account during said period of moneys received from Universal aggregated $2,448,000.00.

The aforegoing constitutes all of the evidence regarding Richfield's financial condition at the time of the transactions with Universal in question here.

-II-

THE TRACING OF THE MONEY

The moneys in question here were deposited by Richfield, as received from Universal, in Richfield's general bank account with Security-First National Bank of Los Angeles. At the time of the first deposit, the account contained a large balance, and it continued thereafter to receive daily deposits, in large sums, of Richfield's general funds. On January 8, 1931, a week before the appointment of the Richfield receiver, the account was wholly depleted, and at the close of that day and the opening of January 9th there was an overdraft of $18,080.18. The moneys here in question were mingled in said account with the general funds of Richfield, and with other moneys received from Universal.

From time to time, during the period in question, Richfield paid in whole or in part, by check on said bank account, for various properties, and it is sought to trace the moneys here involved through said bank account into said properties. A list of the properties follows at the end of these Findings of Fact, and they are referred to meanwhile by the parcel numbers given in said list. No issue is tendered, and no finding is made, on the title to any of the properties, the claim being confined to such right, title, and interest, if any, as Richfield and its receiver may have.

No attempt is made to trace the money into the hands of the receiver, for the reason that the bank account which contained it was wholly depleted a week before the appointment of the receiver, and it is not contended that subsequent repletion of the account would operate to restore the trust funds. The effort is therefore to trace the money into property acquired therewith.

The theory of the attempted tracing is as follows:

The bank balance out of which payment is made for a specified property is presumed to contain the trust money, in whole or in part. This is due to the presumption that Richfield has previously disbursed from the account its own money rather than the trust money, whence it follows that the instant balance must contain trust money, if the account has not meanwhile been wholly depleted, as it has not in the present instance. Whether the whole of the trust fund, or only a part, remains in the immediate balance, depends upon the intermediate state of the account. If during the interim the balance falls at any time below the amount of the trust money previously deposited, it is presumed that Richfield has at that time spent not only all of its own funds in the account, but a portion of the trust fund, and that the portion of the account then remaining is trust money, though less than the amount of trust money previously deposited; and, inasmuch as subsequent repletions of the account are not to be deemed a restoration of the trust fund, the portion of the trust fund represented by the lowest balance existing in the aforesaid interim is deemed the portion of the trust fund which remains in the bank balance out of which payment is made for the specified property. If the aforesaid lowest balance is not less than the amount of the previously deposited trust fund, then the whole of the trust fund is deemed to be contained in the bank balance out of which payment is made for the specified property.

Having thus the whole or a part of the trust money on hand in the bank balance out of which payment is made for the specified property, the payment will consume either the whole or a part of such bank balance. If the whole, then the payment necessarily includes the trust money

which forms part of the bank balance, and the trust money is thus traced into the specified property. If the payment consumes only a part of the bank balance, it is still to be presumed that the trust money is included in the payment, rather than in the unexpended balance, for the following reason. The unexpended balance being afterward wholly depleted, as shown by the overdraft on January 8, 1931, and being accordingly untraceable, it is presumed that the money, including this unexpended balance, which Richfield afterward untraceably spent, was its own money, whence it follows that the money which went into the specified property was trust money, thereby in effect preserved and retained, though in another form; and on the other hand, the presumption that Richfield, in disbursing its bank balance, spent its own money rather than the trust money, does not apply to the money invested in the specified property, because in effect it was not spent at all, in the sense of an untraceable dissipation, but was merely converted into another form, readily identifiable, and so continued to be held; because the cestui que trust is entitled to treat as his own that part of the common fund which is preserved, whether in the form of identified property, as here, or in the form of an undisposed money balance; and because the presumption first referred to is for the protection of the cestui que trust, and should not be applied in such manner as to defeat his rights.

The method involved is as follows:

(a) On the first deposit of so-called trust money, ascertain the lowest bank balance in the period from said first deposit to the first payment thereafter on property from the common account. Enforce a trust on the property for the payment, but limited to the amount of said

low bank balance, or to the amount of said first deposit, whichever is less.

(b) Ascertain the lowest bank balance in the period from the aforesaid first payment to the next payment on property, whether the same property as in (a) or otherwise; no second deposit of trust money having been made meanwhile. Enforce a trust on the last mentioned property for the payment, but limited to whichever of the two following amounts is less: (1) the low balance mentioned in this paragraph; or, (2) the remainder, if any, of the low balance in (a) or of the first deposit of trust money, whichever is less, after applying the same on the first payment in (a).

(c) Proceed as in (b) on each succeeding payment on property, to and including the payment next before the second deposit of trust money.

(d) On the second deposit of trust money, ascertain the lowest bank balance in the period from said second deposit to the next payment on property, whether the same property as any previous item or otherwise. Enforce a trust on the last mentioned property for the payment, but limited to whichever of the two following amounts is less: (1) the low balance mentioned in this paragraph; or, (2) the second deposit plus any remainder of the first deposit after application on payments made before the second deposit, as in (b) and (c).

(e) Ascertain the lowest bank balance in the period from the payment in (d) to the next payment on property, whether the same property as any previous item or otherwise; no third deposit of trust money having been made meanwhile. Enforce a trust on the last mentioned property for the payment, but limited to whichever of the two

following amounts is less: (1) the low balance mentioned in this paragraph; or, (2) the remainder, if any, of the low balance in (d) or of the second deposit of trust money plus any remainder of the first deposit, whichever is less, after applying the same on the payment in (d).

(f) Proceed as in (e) on each succeeding payment on property, to and including the payment next before the third deposit of trust money; and thereafter in like manner to the last payment following the last deposit of trust money.

It is necessary to determine the proper method of ascertaining low balances. There are three alternatives. A low balance on any day may be looked at as either:

1. The closing balance, after crediting on the books the opening balance and all deposits for the day, and charging on the books all withdrawals for the day; thus disregarding the actual order of deposits and withdrawals in point of time, and consequently disregarding the possibility that, by observing such order, a lower balance may have resulted during the day.

2. The balance shown during the day as a result of periodical postings of deposits and withdrawals, after crediting the opening balance; thus either regarding or disregarding the order of deposits and withdrawals in point of time, and consequently either observing or neglecting the true balances, according to the practice of the bank in posting.

3. The balance shown by deducting all withdrawals posted during the day from the opening balance, without crediting deposits for the day; thus disregarding the actual order of deposits and withdrawals in point of time, and

assuming an order which would produce the least possible balances during the day.

The facts bearing on this subject are as follows:

At 8:15 and at 11:15 in the morning the aforesaid bank receives the checks from the clearing house, these being known as the first and second clearings. The checks are proven in and sorted to the various bookkeepers. There is no certain time set for a bookkeeper to post these items or to sort them; it is left to his judgment. Sometimes beginning as early as 10:30 in the morning and sometimes not until 2:30 checks that are received over the window are given to the bookkeepers for posting. A check may come in at 8:15 in the clearings and be given to the bookkeeper and it may stay on his desk and may not be posted to the account until after a deposit that is made at 2:30 in the afternoon. Checks coming in at 11:15 may be posted before checks that came in at 8:15, because the bank does not have to return refused checks to the clearing house until 2:30 and therefore the bookkeeper has from the time he begins work in the morning until 2:30 to ascertain whether or not the check will be honored. Under this system, it would be possible for an opening balance to show $100,000.00 and the closing balance to show $100,000.00, and yet in the meantime checks might have been entered on the account which would completely wipe out the balance at noon and then other deposits in the afternoon might be made which would bring it up to a closing balance of $100,000.00. There is no way under the system used by said bank of telling whether that actually happened on a particular day or not.

Posting is made by said bank on machine books and on such books the total must be pulled before the sheet can be taken out of the machine. The bookkeeper is

continually posting during the day; when he posts in a particular account he takes a balance at that time. Sometimes there will be three balances shown in the course of a day, sometimes seven or eight, according to how many times the bookkeeper goes through his ledger. The bookkeeper could be engaged in making his posting and casting up this balance and at the same time in another part of the bank somebody could be depositing checks in that account or somebody could be withdrawing funds from that account. Also, the bookkeeper may have other checks on his desk which are not included in the group posted at the time. The balance he strikes does not necessarily represent the actual balance of all deposits and checks at the time. It represents only the balance of those checks and deposits which are then posted. The balance taken periodically during the day, as aforesaid, does not necessarily give a true picture of the low balance for the day, because it ignores the unposted checks.

The bookkeeper uses his discretion as to which checks coming in at the same time will be sent back as overdrawing the account. Checks coming in through the clearing house have to be posted and paid or refused by 2:30. If another check comes in after 2:30 that would be returned. If they both come in at 8:15 from the clearing house, there is no certain rule. There will be a period when the bookkeeper has not posted some checks and a check comes in over the counter in the meantime, in which case the bank will honor the check that comes in over the counter rather than the checks that have not been posted. The result is that in determining the balance at any time for honoring other checks that may come in, the bank uses the time of the actual posting and not the time of the receipt of the check. The bookkeeper may have on

the other side of the desk some checks and deposits for Richfield and he may ignore those and post those in front of him, although the former may have come in first. If a deposit of $10,000.00 in cash comes in at 10:00 over the counter, it may not be actually posted to the account by the bookkeeper until 12:00 or 2:00 or 3:00 o'clock. The chances are that it would not be posted until after 3:00 o'clock. On the other hand, if some one comes in with a check and cashes it for $10,000.00, that might not be entered and charged until the afternoon against the particular account. In other words, it is purely arbitrary. The intermediate balances are merely working balances, so that the bookkeepers can go ahead with their work. The only balance that the bank will recognize as really showing the state of the account is the one at the close of the day. When the bank is asked by a depositor to certify his check, the teller takes the ledger sheet of the account to see whether there is sufficient money and if sufficient money does not appear on the ledger he examines the deposits before he certifies the check. If there is sufficient money, he enters that in pencil on the ledger sheet including the deposits which have not been posted. That is not done in every case, but only for certification, and also when a check comes in to be cashed. In these respects the posting is not the sole condition with regard to the status of the account.

It is my opinion that the balance which is properly to be used in applying the intervenor's theory here is the third of those above described; that is, that which is shown by deducting all withdrawals posted during the day from the opening balance, without crediting deposits for the day.

The second above described, which results from periodical postings during the day of deposits and withdrawals,

after crediting the opening balance, is not properly usable, for the reason that under the bank's practice, as above detailed, such balance disregards the actual order of deposits and withdrawals in point of time, and consequently does not reflect the true state of the account at any time.

The first above described, the so-called closing balance, is not usable, for the reason that by its nature it necessarily disregards the actual order of deposits and withdrawals in point of time, and consequently does not reflect the true state of the account at any time since the previous closing balance. To take it as an accurate reflection, it must be assumed that at the moment of each withdrawal, deposits had been received in an amount sufficient to leave a balance at least equal to that resulting from the whole day's transactions. Unless such an assumption is imperative, there is an equal likelihood that at any moment of the day the deposits previously received and the withdrawals then made may have produced a balance less than that resulting from the whole day's transactions, down to zero. Admittedly, the intervenor is not entitled to the benefit of a replenishment of the account after its reduction or exhaustion; yet the closing balance would necessarily yield that benefit, if during the day the account had been reduced or exhausted. Under the burden of proof which is on the intervenor, it cannot avail itself of the assumption which is implicit in the closing balance, in default of that direct evidence which might have been provided by the striking of time-regarding balances during the day. The failure of the bank to strike balances of that conclusive character might, perhaps, in another situation, afford some reason for looking to the closing balances, as the best evidence of which the case admits, in view of banking custom; but in the present situation the intervenor, in

tracing a trust fund into and out of a common account, is bound to better proof than that indicated, and finds it at hand in the facts which support the third description of balance. The other two being inadmissible, the intervenor must content itself with the third, else it must be without any proof at all.

"It is indispensable . . . that clear proof be made that the trust property or its proceeds went into a specific fund or into a specific identified piece of property." (Empire State Surety Co. v. Carroll County, 194 Fed. 593, 604, C. C. A. 8.) "No doubt the individual whose property has been converted has a high equity and is entitled to certain well-settled presumptions; but we cannot assent to the proposition that he may trace his money into any specific fund or security merely by inferences based on presumptions without substantive testimony to sustain them. The burden of proof is on the claimant at the outset; it rests upon him at the close of the case." (In re Brown, 193 Fed. 24, 29, C. C. A. 2.) "The burden of proof was upon the claimant to establish its ownership of the fund." (First Nat. Bank v. Littlefield, 226 U. S. 110, 57 L. ed. 145, affirming In re Brown.) "They were practically asserting title to $9,600.00, said to have been traced into stock in the possession of the trustee. Like all other persons similarly situated, they were under the burden of proving their title. If they were unable to carry the burden of identifying the fund as representing the proceeds of their Interborough stock, their claim must fail. If their evidence left the matter of identification in doubt, the doubt must be resolved in favor of the trustee, who represents all of the creditors of Brown & Company, some of whom appear to have suffered in the same way. Like them, the appellants must be remitted to

the general fund." (Schuyler v. Littlefield, 232 U. S. 707, 58 L. ed. 807, affirming In re Brown.)

This burden relates to the actual, not the presumptive, balance. The actual order of withdrawals and deposits in point of time is therefore material. If the postings faithfully observe that order, actual balances will result. But they do not observe it in the present case, and it is necessary therefore to seek the fact elsewhere. It is not correct to say that the relation of debtor and creditor arises between the bank and its depositor only when the items are posted. When a depositor hands in a dollar bill, and the teller takes it, the bank immediately owes him one dollar. The indebtedness is not postponed to, nor conditional upon, the bookkeeper's act in noting it on a ledger. If the bookkeeper should never enter it at all, the depositor could nevertheless sue and recover it. The same applies to checks, conversely. If the bank should pay a check for fifty cents, it would be entitled to offset it in the depositor's suit for one dollar, whether the bookkeeper had ever noted it on the ledger or not. The question in both cases is one of fact, not of bookkeeping. Thus, in In re Brown, 193 Fed. 24, 28, the court, after referring to the bank's books, said: "The officers of the bank, however, testified that the order in which the entries of debit and credit were made in the books was not necessarily the order in which the separate transactions actually took place. Much testimony was taken in the effort to establish the real sequence of events." And the court proceeded to find the real, as distinguished from the recorded, sequence of events. We are equally concerned here with the real sequence.

It is true that in In re Brown, the court said: "We are clearly of the opinion that when the question is as to the disposition of a fund in a bank account, the time when

certification is signed and noted by the bank is the significant time; it is then that the credit items which make up the balance of account are segregated by the bank as against the obligation assumed by certification. So long as such certification is outstanding, the bank would not allow any of the money thus appropriated to be drawn out." But this really fortifies the position above taken, because it evidently means that the bank, in certifying a check, looks to the actual state of the account at the time, and that it adheres to this afterwards when new checks come in. This accords with the actual practice of the bank in the present case; for the evidence here is that the bank, in certifying checks and in paying checks over the counter, looks, not alone to the entries on the books, but to the unposted deposits and checks as well. The position of the court in In re Brown on the necessity for regarding the actual order of deposits and withdrawals is plainly declared by the following language:

"Moreover, it is not enough to show that there were morning and afternoon balances for several successive days large enough to cover the amount of money which was improperly converted. It might very well be that on any one day checks were presented which exhausted the morning balance and its accretions, in which event these moneys would have been dissipated. We are not prepared to assent to the proposition that subsequent deposits are to be taken as having been made to make good claimant's money thus drawn and spent. Board of Commissioners v. Strawn, 157 Fed. 51. . . . Both of them" (the Master and the District Judge) "had the same understanding of the law as that above expressed, viz., that the first check drawn on any given day might sweep away the balance carried over, and that it would be the merest speculation to

assume that subsequent deposits restored the original situation."

This disposes of any conception of the closing balance as usable for the intervenor's purpose. It disposes of any contention that the order of time may be disregarded in an inquiry of this sort. It affirms, what appears to be conceded here, that subsequent deposits do not restore a trust fund once reduced or exhausted; on which, among many authorites, may be mentioned Schuyler v. Littlefield, 232 U. S. 707, 58 L. ed. 806, and the cases there cited.

The result of the aforegoing is that the claim must fail, unless there is a minimum situation upon which the intervenor may rely; that is, a situation which assumes an order of deposits and withdrawals which at the worst must have occurred. Such a situation presents itself in a case where no deposits are made during the day in question, until all withdrawals of that day have been effected. In that case, the order of withdrawals is indifferent, as they all precede the deposits. Now, it is a fact that withdrawals and deposits occurred each day, and that there was always an opening balance; whence some sort of balance, on one side or the other, continually resulted. This balance cannot be disregarded altogether, if there is a way of regarding it without detriment to defendants' position, correctly maintained as above stated. This position, that the time order must be observed, is preserved, and the proven existence of balances of some sort is recognized, by treating the deposits of the day as coming in after the withdrawals. As said by intervenor's brief, it "estab-

lishes a minimum balance for each day below which it was impossible for the balance to have gone." The intervenor is entitled to no more, and the defendants must concede so much.

The following calculation of the amounts for which, under the intervenor's theory, a trust should be declared in the various properties respectively, is accordingly based upon low balances resulting from the deduction of withdrawals for the day from the opening balance, without crediting deposits for the day.

Period from First Deposit to Second Deposit

Nov. 13, 1929, First Deposit		$750,000.00	
Nov. 30, 1929, First Payment on property		95,040.00	
Low balance Nov. 13-30			$ 93,635.65
(a) Trust in Parcel 1 (payment $ 500.00)		492.60	
(b) Trust in Parcel 2 (payment 50,000.00)		49,261.20	
(c) Trust in Parcels 3 and 4 (payment 44,540.00)		43,881.85	
	(95,040.00)		93,635.65
Credit remaining on low balance			0.00

Period from Second Deposit to Third Deposit

Jan. 20, 1930, Second Deposit			$200,000.00
Jan. 27, 1930, First Payment on Property		$ 500.00	
Low balance Jan. 20-27		308,662.67	
(d) Trust in Parcel 5 (payment=)			500.00
Credit remaining on trust deposit			$199,500.00

Jan 29, 1930, Second Payment on Property	271,202.08	
Low balance Jan. 27-29	572,859.21	
(e) Trust in Parcel 2 (payment $ 50,000.00)	36,780.70	
(f) Trust in Parcel 7 (payment 221,202.08)	162,719.30	
	(271,202.08)	$199,500.00
Credit remaining on trust deposit		0.00

Period from Third Deposit to Fourth Deposit

Feb. 15, 1930, Third Deposit	$500,000.00	
Less: Feb. 17, repayment on account	100,000.00	
	400,000.00	
Payment on Property, none,	0.00	
Low balance Feb. 15 to Feb. 25 (Fourth Deposit)		0.00
Trust in Property, none,		0.00
Credit remaining on low balance		0.00

Period from Fourth Deposit to Fifth Deposit

Feb. 25, 1930, Fourth Deposit		$100,000.00
Payment on Property, none,	$ 0.00	
Low balance Feb. 25 to Feb. 27 (Fifth Deposit)	204,138.29	
Trust in Property, none,		0.00
Credit remaining on trust deposit		$100,000 00

Period from Fifth Deposit to Sixth Deposit

Feb. 27, 1930, Fifth Deposit	$100,000.00
	$200,000.00

Mar. 1, 1930, First Payment on Property	$ 82,332.84	
Low balance Feb. 27-Mar. 1	386,272.73	
(g) Trust in Parcel 6 (Payment=)	$ 34,332.84	
(h) Trust in Parcels 3 and 4 (Payment=)	48,000.00	$ 82,332.84
Credit remaining on trust deposit		$117,667.16
Mar. 5, 1930, Second Payment on Property	$ 10,625.00	
Low balance Mar. 1-5	$239,919.57	
(i) Trust in Parcel 8 (Payment=)		10,625.00
Credit remaining on trust deposit		$107,042.16
Mar. 12, 1930, Third Payment on Property	50,000.00	
Low balance Mar. 5-12		17,400.43
(j) Trust in Parcel 2 (Payment $50,000.00)		17,400.43
Credit remaining on low balance		0.00

Period from Sixth and Last Deposit

June 6, 1930, Sixth Deposit	$ 75,000.00	
June 25, 1930, First Payment on Property	34,332.43	
Low balance June 6-25		0.00
Trust in Property, none		0.00
Credit remaining on low balance		0.00

Note.—Inasmuch as the theory assumes that withdrawals for the day (including payment on property) precede deposits for the day (including deposit of so-called trust money), the period for each low balance is fixed as follows: From a deposit to a payment, exclude the date of each. From a deposit to a deposit, exclude the date of the initial deposit and include the date of the next deposit. From a payment to a payment, include the date of the initial payment and exclude the date of the next payment.

SUMMARY

Assuming the propriety of the theory and method employed, assuming the existence of a trust relation, and assuming that a trust in identified property results from the aforegoing application of said theory and method (none of which is decided at this stage of the findings), the amount in each instance is as follows:

Parcel 1			(a)	$ 492.60
Parcel 2:	(b)	$49,261.20		
	(e)	36,780.70		
	(j)	17,400.43		103,442.33
Parcels 3 and 4:	(c)	43,881.85		
	(h)	48,000.00		91,881.85
Parcel 5			(d)	500.00
Parcel 6			(g)	34,332.84
Parcel 7			(f)	162,719.30
Parcel 8			(i)	10,625.00
				$403,993.92

Identification of Property

Parcel 1: Real property, known as "Franklin & Vermont Service Station," in the city of Los Angeles. For description see Receiver's Exhibit F, page 1.

Parcel 2: Leaseholds known as the Delaney Producing Property, Los Angeles County, California. For description see said exhibit, page 28 et seq.

Parcels 3 and 4: Ten storage tanks, of which five are located on property known as the Hottenroth property,

adjoining the Rioco Refinery, at Long Beach, Los Angeles County, California, and five are located on property known as the Hunstock property, adjoining said Rioco Refinery. For description of said tanks and of the real property on which they are located, see said exhibit, pages 2 and 3. It does not appear that the tanks are a part of the realty, and it is accordingly found that they are not. Parcels 3 and 4 therefore comprise the ten tanks, but not the realty.

Parcel 5: Real property, known as the Mull property, in Sacramento County, California. For description, see said exhibit, page 19.

Parcel 6: Vapor Recovery Plant, located on Parcel No. 3, of the Watson Refinery land, in Los Angeles County, California. For description of the land on which this plant is located, see said exhibit, commencing at bottom of page 25. It does not appear that this plant is a part of the realty, and it is accordingly found that it is not. Parcel 6 therefore comprises the plant, but not the realty.

Parcel 7: 106,000 shares of stock of Universal Consolidated Oil Company, represented by the following certificates issued to Richfield Oil Company of California: No. LX26, February 13, 1930, 42,500 shares; No. LX27, February 14, 1930, 50,000 shares; No. LX28, February 14, 1930, 2,000 shares; No. LX32, March 10, 1930, 11,500 shares.

Parcel 8: 5,100 shares of stock of Universal Consolidated Oil Company, represented by the following certificate issued to Richfield Oil Company of California: No. LX31, March 7, 1930.

No determination of title or ownership is made in reference to any of the above properties. The findings relate

only to such right, title and interest, if any, as Richfield Oil Company of California and its receiver may have.

The Richfield receiver has made payments on account of the purchase price of Parcels 1, 2, and 5, respectively. The data in reference thereto are as follows:

	Total purchase price	Payments before receivership	Payments since receivership	Traced on above theory
Parcel 1—	$ 63,856.24	$ 11,500.00	$22,500.00	$ 492.60
Parcel 2—	3,670,638.33	540,000.00	87,123.82	103,442.33
Parcel 5—	14,200.00	8,000.00	6,000.00	500.00

Parcel 1 was conveyed to Richfield by grant deed dated February 18, 1927, and contemporaneously Richfield gave the vendor a note, secured by mortgage on the property, for the unpaid balance of the purchase price. At January 15, 1931, the date of the appointment of the receiver, $22,500.00 remained unpaid on the principal of said note, and the receiver has since paid that sum.

Parcel 2 was purchased by Richfield under a conditional sales contract dated August 1, 1927. Bills of sale and assignments of leases were deposited in escrow by the vendor in 1927, and were delivered to the receiver on payment of the balance of the principal of the purchase price, which payment was made by the receiver, in the sum of $87,123.82.

Parcel 5 was purchased by Richfield from A. M. Mull, under an option dated November 22, 1929, taken up by an agreement of purchase dated April 7, 1930, for a price of $14,200.00, of which $4,700.00 had been paid before said April 7, 1930, and $3,500.00 of which was payable by the assumption by Richfield of a note in that principal sum, secured by trust deed on the property, which had been given by Mull to Moore; and the remainder of the purchase price was payable thereafter by Rich-

field, of which the principal sum of $2,500.00 remained unpaid at the time of the appointment of the receiver. The receiver has paid the holder of said note the aforesaid $3,500.00, in full thereof, and has paid to Mull the aforesaid $2,500.00, in full of the remainder of said deferred payment.

Parcel 2 is not listed in the Exhibit attached to the bill in intervention, but by consent at the hearing that parcel is deemed to be included without the formality of amendment.

The pleadings admit as follows in reference to the bond indenture: Security-First National Bank of Los Angeles has filed its bill of complaint herein to foreclose a mortgage and trust indenture of the Richfield Oil Company of California of date May 1, 1929, securing an authorized bonded indebtedness in the aggregate principal amount of $75,000,000.00, which mortgage and trust indenture purports to be a mortgage and lien upon all of the assets and properties of Richfield, including all of the assets into which the money in question is here sought to be traced. Richfield has issued and outstanding, first mortgage bonds secured by said mortgage and trust indenture in an amount in excess of $24,000,000.00. Richfield has defaulted, and said trustee has declared said default and instituted said proceeding for the purpose of having said mortgage and trust indenture declared a valid and subsisting first lien and charge on all of the properties and assets of Richfield, including all of the assets into which the money in question is here sought to be traced, prior and superior to the interests, liens, and claims of all persons, including Universal; and the trustee asks that all of said property and assets be sold without right of redemption.

CONCLUSIONS

—I—

CHARACTER OF THE TRANSACTION

On its face, the transaction bore the indicia of a loan; that is, an advance of money, to be repaid with interest. The principal was set up on the books of each company. a repayment on account was likewise set up, as was also an exchange of checks representing a repayment and a refund thereof. Interest charges were invoiced periodically to Richfield and approved by it, and one instalment of interest was paid. The interest charges were set up on Universal's books periodically, and the single payment of interest was there credited. Universal's secretary-treasurer and its bookkeeper regarded the transaction, at the time, as a loan. The transaction was included in Universal's certified balance sheet of December 31, 1929, presented at the stockholders' meeting of April 15, 1930, in the general lump designation of "Demand Loans" or "Call Loans." The statement given by Universal's secretary-treasurer, in January, 1930, to an inquirer, designated the account as "Call—1 day notice." It is true that no note was given, but a note is not an essential condition of a loan.

If this were all, there would be an end of intervenor's case. Other considerations remain, however, and these are found as follows.

The executives of Richfield had given attention to Universal during some four years. They finally developed an interest, not only in Universal's producing properties, but in its money, of which a million seven hundred thousand dollars was in liquid investments. They contemplated procuring the use of that money for Richfield. Their

company owed banks at the time over ten million dollars; and while that indebtedness implies a high credit standing at the time it was incurred, it does not appear when it originated; and it does appear that seventeen months after its first agreement to buy Universal stock, and seven months after receipt from Universal of the last money involved here, the company went into the hands of a receiver as an insolvent. The expressed contemplation of Universal's money as a source of Richfield financing, and the immediate use of seven hundred and seventy-five thousand dollars thereof as soon as Richfield was in a position to procure it, together with the fact of its own enormous indebtedness and its rapidly developing insolvency, certify to its need of Universal's money.

In that situation, one of its directors negotiated for the Universal stock, and procured it, partly for Richfield, and partly for a syndicate in whose profits Richfield was to participate. Of its cash payment for the original block of stock, Richfield procured from Universal, within seven weeks after, an amount equal to ninety-four per cent. Of its cash payment for the second block, it procured from Universal, nine days before the payment, an amount equal to ninety per cent. In other words, while paying $1,043,702.08 for the stock, it procured from Universal, at the times aforesaid, $975,000.00. About two weeks after payment for the second block, it procured an additional $500,000.00, while the cash payment for the third block, made three weeks later, amounted to $10,625.00, and the amount of the previous payments over the previous procurements was $68,702.08, a total of $79,327.08, leaving then, of the $500,000.00, uncompensated by any cash cost of stock, $420,672.92 to the good.

This was made feasible by a condition of the original purchase agreement, under which Richfield immediately assumed control of Universal. Despite its minority stock interest and its minority representation on the board at the time, there is no doubt about the control. The chairman of Richfield's board, who was then also president of Universal, declared the fact in his report of October 8, 1929, to the Universal stockholders, about a month before Richfield procured $775,000.00 from Universal's treasury.

This control was immediately manifested by the withdrawal, within a month, of $1,100,000.00 of Universal's money from call loans in New York. This was done by order of Richfield men, and was done for the purpose of procuring Richfield financing; a first step in effecting one of the principal objects initially conceived on its part. Thereafter, all steps in the procurement of the money for its own use were directed and taken by persons who were, if members of the Universal organization, also members of the Richfield organization, with the assistance of Richfield men who were not members of the Universal organization. Universal's secretary-treasurer and its bookkeeper, who attended to clerical and mechanical details, took their orders from those who belonged to the Richfield organization, and never presumed to exercise any discretion of their own. Except for these two, nobody in the Universal organization, unconnected with Richfield, knew what was going on. No discussion or action ever took place at any meeting of the Universal board. Those directors of Universal who were not associated with Richfield displayed no interest in the immense cash surplus in their company's treasury, or its disposition; the whole matter was left to the uncontrolled discretion of the Richfield men.

In several instances, these latter actively attempted concealment. Their restoration of $600,000.00 on the morning before the Universal stockholders' meeting and their resumption of the same sum immediately after the meeting could have had no other purpose. The refusal to disclose to a persistent inquirer the identity of the borrower, and the failure to answer a stockholder who wrote for information, are further instances. Taken all together, they constituted a confession of vulnerability.

While Universal had generally, apart from this money, sufficient funds with which to pay its operating expenses and dividends, and discount its bills, there was a time when, on account of these transactions, it was unable to meet its payroll or discount its bills, and Richfield had to come to its aid; and at one time it had to pay its dividend to Richfield with a book credit and to call on Richfield for money to help in paying the dividend to others; and at another time it was without money with which to pay a dividend that had been earned.

Previously, loans on call in New York had been made by direction of the president and the secretary of Universal, without any action by the board, and a loan on a note had been so made; but in none of these cases was any person interested as borrower who had any connection with Universal.

The question is, whether in the aforegoing situation, what would otherwise be deemed a loan must here be deemed a misappropriation. My opinion is that it must.

Under the conditions proven, the burden is on the defense. This requires the defense to show that the transaction was openly and honestly entered into, that it was fair and just, that it was in the true interest of Universal, and that the consideration was adequate. Geddes v. Ana-

conda C. M. Co., 254 U. S. 590, 65 L. ed. 425, 432; Corsicana Nat. Bank v. Johnson, 251 U. S. 68, 64 L. ed. 141, 155; Mumford v. Ecuador Dev. Co., 111 Fed. 639, 643, C. C. N. Y.; McCaffrey v. Elliott, 47 Fed. (2d), 72, 73, C. C. A. 5; Finefrock v. Kenova M. Car Co., 22 Fed. (2d), 627, 632, C. C. A. 4. This burden has not been sustained.

The conduct of the promoters of the transaction must be subjected to the closest scrutiny, in the light of their opportunity for serving themselves. The temptation which usually attends the possession of power, to exercise it selfishly, raises a suspicion which they must meet by a clear showing of the utmost good faith. Their acts are to be gauged by principles of morality, and their motives by their acts. If their use of power is selfish, or unfair, or oppressive, or disregardful of interests which they are bound to protect, the color of regularity in the form will not save them from the condemnation of equity. Twin-Lick Oil Co. v. Marbury, 91 U. S. 587, 23 L. ed. 328, 330; Mumford v. Ecuador Dev. Co., 111 Fed. 639, 643, C. C. N. Y.; McCaffrey v. Elliott, 47 Fed. (2d) 72, 73, C. C. A. 5; Finefrock v. Kenova Mine Car Co., 22 Fed. (2d) 627, 632, C. C. A. 4.

A position of power does not of itself necessarily invalidate the possessor's dealings with his corporation, but it imposes upon him a duty commensurate with his power, and consequently the burden of justifying its exercise; and this, whether the possessor is itself a corporation or otherwise. Tested by the principles above outlined, there is in the present case a plain failure of justification.

If a note had been given, it would not of itself have exonerated Richfield, for the court will look through that form to the substance; but in withholding it, Richfield did

less than its duty required. It thereby made sure in its own interest that its obligation should remain substantially frozen in the hands of a controlled creditor, for such a book account would not be readily negotiable. On the other hand, it disadvantaged Universal, in impairing its freedom of disposition of this enormous asset, a freedom which would have been preserved to it by the possession of negotiable notes.

It was the duty of Richfield to have proposed the accommodation to Universal's board, thereby recognizing the right of the minority members (originally in fact a majority) to be heard and if necessary to take preventive measures. This right was wholly disregarded; and, as it proved, it was a right which might well have been exercised. It is true that the other directors were incurious as to the whereabouts of their company's immense surplus, but their negligence does not excuse those who took advantage of it, and the burden which arose between the negligence of one set of directors and the selfishness of the other set is not to be shifted to stockholders who were virtually, between the two, unrepresented. It is not an answer that the making of loans had been previously assumed by certain officers without action of the board, because the officers who made such loans had no interest.

The moneys passed in this case without the slightest knowledge or investigation of the beneficiary's responsibility. No bank would have considered such loans without a financial statement, supported by appraisals. No such information was furnished by Richfield in this instance. If it had been, an honest director (and a majority of the old board still remained when the first money passed) might well have questioned the offered responsibility. Richfield, having the power to take the money

without consulting the disinterested directors, owed a duty to the stockholders to refrain and instead to make a full and fair disclosure of its condition to those charged with the protection of the stockholders. It is reasonable to think that such a disclosure would have resulted, while Richfield representatives constituted only a minority of the board, in a refusal of the accommodation; but in any event the Richfield representatives evidently realized the danger of such action, and in any event the other directors were entitled to an opportunity, whatever the result of that opportunity might have turned out to be.

In defect of a satisfactory showing of responsibility, it was Richfield's duty to provide security, if it could, and if it could not, to decline the accommodation. This was not merely academic. Apart from its failure to make a financial statement, and even on a favorable assumption of worth, the safety of these heavy unsecured accommodations depended to some extent on the goodwill of the banks to which Richfield owed more than ten million dollars. The calling in of these bank loans would have jeopardized the Universal account, even assuming that Richfield owed nothing else. Richfield's duty was to relieve Universal of this participation in a risk which was subject to the will of others, by providing adequate security. In any event, however, a faithful regard to the interests of Universal's stockholders required that in the absence of a plain showing of financial responsibility, security be given by Richfield.

In the absence of these measures of protection, the consideration for the accommodation was entirely inadequate. Mere interest would not be an adequate compensation for the risk. The banks had, besides interest, both protection and compensation in the balances kept with

them, whereby they gained a lien and meanwhile the use of the borrower's money. No such advantage was granted to Universal.

In fact, Richfield, in taking the money, did not even agree to pay interest. Afterwards, it is true, interest charges running at various rates from four per cent to five and one-eighth per cent were recognized by Richfield, and were in fact fixed by Richfield. They were thus fixed after the fact by the borrower without consultation with the lender. Fair dealing required that Richfield by note or otherwise agree with Universal at the time of the accommodation upon the payment of interest at an agreed rate. A matter of such consequence should not have been left either to implication of law or to the will of Richfield. The fluctuating rate fixed by it from time to time and the calm neglect of payments show not only the lack of any definite commitment but the assumption by Richfield of an uncontrolled discretion as to whether, when, and at what rates it might please to pay.

In order to effect the dubious situation above outlined, Richfield vacated a sound one. The recalling of the New York loans was obviously in its own interest and not in that of Universal, though its duty required it to promote the latter's rather than its own.

The self-serving intent appears from the beginning in the nature of the stock transaction, whereby Richfield assured itself of actual control with a minority of the stock, and enabled itself to take out of the Universal treasury, practically contemporaneously, an amount of money almost equal to its payment for the stock. The fact that it acknowledged on the books liability for the money taken does not improve the obviously interested motive; for at least it may be said that it thereby relieved the

immediate pressure on its own treasury and converted, with Universal's own money, into a future obligation what would otherwise have been a present disbursement.

All this was accomplished by means which, considering the standard of conduct to which its position of power bound it, may well be called clandestine. Its failure to consult the board, its failure to advise the opposite directors personally, its failure to disclose the fact in its annual report to the stockholders, its fictitious semblance of restoring a part of the money on the day of the stockholders' meeting, its refusal to answer a point-blank inquiry, all together show, not only a lack of that openness which its position required, but a deliberate course of concealment, and a consequent consciousness of guilt.

The whole proceeding was arbitrary, ex parte, and self-interested, pursued in the exercise of irresponsible power, reckless of the consequences to others, and fruitful of injury.

It is held that Richfield occupied a position of trust; that it violated its trust; that it misappropriated the money of its cestui; and that in doing so it was guilty of actual fraud.

The aforegoing views are, I think, sustained and, in fact, compelled by the following decisions:

Peters v. Bain, 133 U. S. 670, 33 L. ed. 696, 699; Geddes v. Anaconda C. M. Co., 254 U. S. 590, 65 L. ed. 425, 432; Wardell v. Union Pacific R. R. Co., 103 U. S. 651, 26 L. ed. 509, 511, 512; Mumford v. Ecuador Dev. Co., 111 Fed. 639, 643, C. C. N. Y.; Ervin v. Oregon Ry. & Nav. Co., 27 Fed. 625, C. C. N. Y.; Jones v. Missouri Edison Electric Co., 144 Fed. 765, 771, C. C. A. 8; Wheeler v. Abilene Nat. Bank Bldg. Co., 159 Fed. 391,

394, C. C. A. 8; Finefrock v. Kenova M. Car Co., 22 Fed. (2d), 627, 632, C. C. A. 4; Stebbins v. Michigan Wheelbarrow & Truck Co., 212 Fed. 19, 28, C. C. A. 6; Saranac & L. P. R. Co. v. Arnold, 60 N. E., 647, 648, N. Y.; Riley v. Callahan M. Co., 155 Pac. 665, 669, Ida.; Indian Land & Trust Co. v. Owen, 162 Pac. 818, 819, Okla.

—II—

EFFECT OF THE TRANSACTION.

The effect was that Richfield held the abstracted moneys in trust for Universal and acquired no title thereto in its own right. Peters v. Bain, 133 U. S. 670, 33 L. ed. 696, 699; Omaha Nat. Bank v. Federal Reserve Bank, 26 Fed. (2d), 884, 887, C. C. A. 8; Ervin v. Oregon Ry. & Nav. Co., 27 Fed. 625, C. C. N. Y.; Indian Land & Trust Co. v. Owen, 162 Pac. 818, Okla.; Cal. Civil Code, section 2224. It is true that under certain circumstances, the transaction of an interested director or majority of directors with the corporation may be merely voidable. Thomas v. Brownville Etc. RR Co., 109 U. S. 522, 27 L. ed. 1018; Rogers v. Guaranty Trust Co., 60 Fed. (2d), 114, 118, C. C. A. 2; Jones v. Missouri Edison Electric Co., 144 Fed. 765, 777, C. C. A. 8; San Diego v. Pacific Beach Co., 112 Cal. 53, 58. But in these cases actual fraud is not involved. The decisions cited recognize this distinction. For instance, in the California case cited, the court said: "In this case there is no actual fraud, either alleged or found; and this distinguishes it from many of the cases cited by appellant." Where, as in the present case, the money is abstracted by actual fraud, it seems to be clear, both upon reason and upon authority, that a trust results. There can be no question here of ratifica-

tion of the fraud. The transaction, constituting as it did a fraudulent misappropriation and breach of trust, could not be ratified, certainly not without unanimous consent of the stockholders on full knowledge. Some point is made of a resolution adopted at the stockholders' meeting on April 15, 1930, approving "the acts of the board and officers as the same appear in the books and records of the corporation." Even if the stockholders could effectively ratify a fraudulent misappropriation of the company's money, 98,079 shares were unrepresented at the meeting, and could not possibly be bound; the proxyholders who voted nearly all of the represented stock in favor of the resolution were in part the faithless ones themselves and in part those who knew nothing of the matter at all; while the advances did appear on the records, they were buried therein in such a manner that it would have taken an investigation on the part of a stockholder to have discovered them; and in fact, none of the stockholders, except the interested one, knew what appeared on the records respecting this transaction. The blanket "ratification" was rather an additional evidence of bad faith. It was certainly not an effective exoneration of the wrongdoers.

—III—

TRACING THE TRUST MONEY INTO PROPERTY

A trustee deposits trust money in an account containing his own funds, pays for an identified piece of property out of the mixed fund, and afterwards dissipates the remainder. Between the deposit and the payment he has daily deposited his own funds and daily withdrawn from the mixed fund, but the account has never been exhausted. The question is, whether a trust is to be declared in the

identified piece of property for the payment thereon, limited by the amount of the trust money deposited or by the intervening low balance in the account, whichever is less.

The modern development of this subject in equity began in 1879 with the celebrated English case of In re Hallett's Estate (Knatchbull v. Hallett), on appeal from the Chancery Division, L. R. 13 Ch. Div. 696. A multitude of American decisions have variously construed and applied its principles, with a certain harmony on the underlying points, and some variation in the application. In the present case, the federal appellate decisions are to be looked to, in preference to the state decisions, where the former afford light. John Deere Plow Co. v. McDavid, 137 Fed. 802, C. C. A. 8; Beard v. Independent District, 88 Fed. 375, C. C. A. 8. On the whole subject, reference is made to an exhaustive annotation by R. T. Kimbrough in 82 A. L. R. (1933), pp. 46-288, which, while dealing specifically with insolvent banks, covers the phases which concern us here.

The ground upon which the cestui is permitted to follow the trust fund into the hands of a receiver is that it belongs to him, whether in the form in which he parted with it or in a substituted form. Macy v. Roedenbeck, 227 Fed. 346, 353, C. C. A. 8. Universal is accordingly here in the position of one claiming his own property.

The commingling of a trust fund with other similar funds in a bank does not extinguish the trust or defeat the rights of the cestui to follow and reclaim the trust fund, in its original or in a substituted form; and if the trust money remains in the mixed fund, the confusion merely converts it into a prior charge upon the entire mass. San Diego County v. California Nat. Bank, 52

Fed. 59, 62, C. C. S. D. Cal.; Frelinghuysen v. Nugent, 36 Fed. 229, 239, C. C. D. N. J.; American Can Co. v. Williams, 176 Fed 816, 819, C. C. W. D. N. Y., affirmed 178 Fed. 420, 422, C. C. A. 2; Brennan v. Tillinghast, 201 Fed. 609, 612, C. C. A. 6; Ellerbe v. Studebaker Corp., 21 Fed. (2d) 993, C. C. A. 4; City of Miami v. First Nat. Bank, 58 Fed. (2d) 561, C. C. A. 5.

No change in the state or form of the trust property can divest it of its trust character; a court of equity will follow it through all the transmutations it may undergo in the hands of the trustee, and it may be pursued and recovered by the beneficial owner as long as it can be traced or identified, either in its original state or in some altered or substituted form. And this applies as well after the insolvency of the trustee as before. First Nat. Bank v. Armstrong, 36 Fed. 59, 61, 62, C. C. S. D. Ohio; St. Augustine Paint Co. v. McNair, 59 Fed. (2d) 755, 757, D. C. S. D. Fla.; Kemp v. Elmer Co., 56 Fed. (2d) 657, D. C. S. D. Cal.; In re J. M. Acheson Co, 170 Fed 427, 429, C C. A 9; Board v. Strawn, 157 Fed. 49, C. C. A. 6; Peters v. Bain, 133 U. S. 670, 33 L. ed. 696, 699.

Where the recovery concerns the mixed fund itself, the whole remaining fund will be charged, not exceeding the lowest intervening amount thereof, and provided it has not meanwhile been exhausted. This proviso is for the reason that if the whole mixed fund is once gone, the trust money is gone with it, and subsequent repletion from free funds does not restore the trust fund; and the limitation to the lowest intervening amount results from the same principle. Board v. Strawn, 157 Fed. 49, 51, C. C. A. 6; Blumenfeld v. Union Nat. Bank, 38 Fed. (2d) 455, C. C. A. 10; Schuyler v. Littlefield, 232 U. S. 707, 58 L. ed. 806; In re Brown, 193 Fed. 24, C. C. A. 2; In re

Bolognesi & Co., 254 Fed. 770, C. C. A. 2. When the aforesaid conditions are shown, that is, money in the mixed fund, no intervening exhaustion, an intervening low balance, the tracing of the trust fund is complete, without anything more specific; and this satisfies the requirement that clear proof be made that the trust money went into and remains in a specific fund. Empire State Surety Co. v. Carroll County, 194 Fed. 593, C. C. A. 8; Brennan v. Tillinghast, 201 Fed. 609, C. C. A. 6; Macy v. Roedenbeck, 227 Fed. 346, C. C. A. 8; American Surety Co. v. Jackson, 24 Fed. (2d) 768, C. C. A. 9; Central Nat. Bank v. Conn. Mut. Life Ins Co., 104 U. S., 14 Otto 54, 26 L. ed. 693 (1881); In re Hallett's Estate, L. R. 13 Ch. Div. 696, (1879). On this showing, the burden shifts to the trustee to show that in fact the disbursements were from the trust fund, and that the trust fund was so dissipated or lost. And this burden rests upon a receiver as well as upon the party himself. American Surety Co. v. Jackson, 24 Fed. (2d) 768, C. C. A. 9; Fiman v. State of So. Dakota, 29 Fed. (2d) 776, C. C. A. 8 (cert. denied 279 U. S. 841, 73 L. ed. 987); Smith v. Mottley, 150 Fed. 266, C. C. A. 6.

The aforegoing rules, which, so far as they relate to the mixed fund itself as the subject of the charge, are established in the federal courts without dissent, have their basis in the principle, which, ever since the Hallett case, is equally well established, that a faithless fiduciary will not be heard to say in his own behalf and interest that his disbursements from the common fund were misappropriations of trust money rather than lawful expenditures of his own; else he would be rewarded, and his beneficiary penalized, by allowing him to assert his own misconduct. Accordingly, what is left in the mixed fund must be attributed first to the trust, and afterwards to himself.

This is often called a presumption or fiction, but it is not truly so; it is a true equitable estoppel, and on that ground needs no support in any supposed intention of the trustee. The nature of this principle as an estoppel, and not as a mere presumption of intention, appears throughout the discussion by the judges in the Hallett case, and is stated by Justice Thesiger in that case in the phrase, "Allegans suam turpitudinem non est audiendus." Since the Hallett case, the rule at law, that the first money in is the first money out, as declared in Clayton's Case in 1816, in England, no longer applies between a fiduciary and his cestui, though it still applies between cestuis themselves. In re Hallett's Estate, L. R. 13 Ch. Div. 696 (1879); Central Nat. Bank v. Conn. Mut. Life Ins. Co., 104 U. S., 14 Otto 54, 26 L. ed. 693 (1881); American Surety Co. v. Jackson, 24 Fed. (2d) 768, C. C. A. 9; Fiman v. State of So. Dakota, 29 Fed. (2d) 776, C. C. A. 8; Empire State Surety Co. v. Carroll County, 194 Fed. 593, C. C. A. 8; Brennan v. Tillinghast, 201 Fed. 609, C. C. A. 6; and many others. The federal courts without exception now follow the rule of the Hallett case, that the trustee spends his own money first. 82 A. L. R. at 155, statement by annotator.

The requirement of clear and positive identification being satisfied by the sort of proof above described, where the object is the fund of money, the question now arrives, what sort of proof will satisfy the like requirement, where the object is property other than the fund of money.

Undoubtedly, if the trust money is earmarked, as by segregation, and it appears that it went into a specific piece of property, of whatever kind, the tracing is complete, and a trust results in the substituted property. Peters v. Bain, 133 U. S. 670, 33 L. ed. 696. But where

the property is purchased with money out of a fluctuating mixed fund, afterwards dissipated, questions arise which are not so clearly settled as those which pertain to an undissipated fund. These questions, with my views thereon, are as follows.

(a) It is contended that the estoppel above alluded to applies to disbursements for all objects alike, the purchase of land as well as the purchase of an ice-cream soda. Applying this theory to the present case, Richfield must be held to have invested its own money in the property in question, and to have dissipated the trust money afterwards; because the conversion of trust money into other property would be a violation of its duty, and such a breach must not be imputed to it. Thus Richfield makes a clear gain, and the estoppel which was intended to protect the victim defeats him. If this development is necessary, equity may still refuse to follow it; but in my opinion it proceeds from a fallacy, and is not necessary. On the contrary, it is a misapplication of the doctrine, and is indeed inconsistent therewith; for the doctrine concerns the dissipation, not the retention, of the fund, and it is immaterial whether it be retained in one form or another.

When the trust money is segregated and so traced into property, it is admitted by all the cases (Peters v. Bain, 33 L. ed. 696, for example), that the property is but a subsituted form, and takes the place of the money. If the owned money were similarly segregated and traced into property, the same would of course be true; the property would be but a substituted form of the owned money. If there is no segregation, but the mixed fund is traced into property, the same still remains true; the property is but a substituted form of the mixed fund. If there was any trust money in the mixed fund, it remains in the sub-

stituted mixed form: and it remains there in the same order in which it lay in the mixed fund itself: first for the benefit of the cestui, and first to be retained for him, and only afterwards for the benefit of the holder, and only afterwards to be retained for him. The cestui's money has not been dissipated at all; on the contrary, it has been retained for him, but in another form. The holder of the mixed fund might invest the whole thereof in bonds at the same time; if the contention were sound, that would defeat the cestui's title as effectually as would a dissipation of the whole fund at one turn of the roulette wheel; but it is obvious that no such result would follow; the cestui's money would still be in the bonds, to the same extent that it was in the fund. In the case of a partially invested mixed fund, the estoppel does not come into play at all, any more than it does in the case of a wholly invested or wholly undissipated fund. It is accordingly repugnant to the rule itself, and certainly not a necessary consequence thereof, to reward the guilty and penalize the innocent in the manner proposed.

Moreover, if there were such a thing as an estoppel which concludes the opposite party instead of the one nominally estopped, it should be frankly abandoned by a court of equity. Another rule, equally appealing to the conscience, should have effect: the rule which requires the fiduciary, in such a case, to do equity. Nothing could be more abhorrent to the conscience than that the fiduciary should set aside to himself the gain and to his beneficiary the loss. The difficulty is created by himself; the burden of it should be on him. To do equity, he must concede the first fruits to the beneficiary. Before he can be heard at all, he must be required to do so.

The law of England, where the estoppel doctrine originated, is settled in accordance with the aforegoing views. In the case of In re Oatway, in the Chancery Division (1902), L. R. 2 Ch. Div. 356, a fiduciary invested money from the mixed account in corporate shares, dissipated the remainder, and died. The shares were held to belong to the trust. The Hallett case was referred to, and Sir Matthew Joyce said: "It is a principle settled as far back as the time of the Year Books that, whatever alteration of form any property may undergo, the true owner is entitled to seize it in its new shape if he can prove the identity of the original material. . . . It is, in my opinion, equally clear that when any of the money drawn out has been invested, and the investment remains in the name or under the control of the trustee, the rest of the balance having been afterwards dissipated by him, he cannot maintain that the investment which remains represents his own money alone, and that what has been spent and can no longer be traced and recovered was the money belonging to the trust." (It was objected that his own share of the account exceeded £2137, the price of the shares, and "that he was therefore entitled to withdraw that sum, and might rightly apply it for his own purposes.") "To this I answer that he never was entitled to withdraw the £2137 from the account, or, at all events, that he could not be entitled to take that sum from the account and hold it or the investment made therewith, freed from the charge in favour of the trust, unless or until the trust money paid into the account had been first restored, and the trust fund reinstated by due investment of the money in the joint names of the proper trustees, which never was done."

The same position is taken by the Circuit Court of Appeals in the 6th Circuit, in Brennan v. Tillinghast, 201

Fed. 609, 613, 614 (1913), in which the question directly arose. A fiduciary bank had the trust money on deposit with another bank in a mixed account. The former sold drafts on this account, in less than the balance, and received the amount thereof in cash from the purchaser. It was held that this constituted, in effect, a transfer of so much of the trust fund in cash to the vaults of the first mentioned bank, and that "this portion of the trust fund must be deemed to have remained in the vaults of" (said bank) "as part of the trust fund, in cash, until it came into the possession of the receiver." After describing the rule of the Hallett case, Judge Sanford said: "It is furthermore clear that this rule of presumption has no application where the evidence shows that the first moneys drawn out of the mingled fund by the tort-feasor were not in fact dissipated by him at all, but were merely transferred, in a substituted form, to another fund retained in his own possession. In such case, it must be held that the trust attaches to the substituted form in which the property is retained by the tort-feasor, and that the right to follow the trust in such form is not lost by reason of the fact that the tort-feasor thereafter draws out and spends for his own purposes the balance of the fund in which the trust money was originally mingled. The English case of In re Oatway, L. R. 2 Ch. 356, 359, directly sustains this view."

The Circuit Court for the Southern District of New York had previously, in 1911, taken the same view. In Primeau v. Granfield, 184 Fed. 480, 484, Judge Hand, referring to the Hallett case, said: "The language about presumed intent in Knatchbull v. Hallett, supra, which Sir George Jessel laid down with his customary vigor, was merely a way of giving an explanation by fiction of the

right of the beneficiary to elect to regard his right as a lien. That it is a fiction appears clearly enough in this case where Granfield could have had no intention about the investments as he meant to use all the money for himself anyway. To say that in such a case he will be 'presumed' to intend to take his own money out first is merely a disingenuous way common enough, to avoid laying down a rule upon the matter. This fiction in Re Oatway (1903) 2 Ch. Div. 356, would have brought the usual injustice which fictions do bring, when pressed logically to their conclusion. Logically, the trustee's widow, in that case, was quite right in claiming the first withdrawal, although the trustee had invested it profitably, and had subsequently wasted all of the fund which had remained in the bank. That was, of course, too much for the sense of justice of the court which awarded to the wronged beneficiary the investment, intimating that the rule in Knatchbull v. Hallett, supra, applied only where the withdrawals were actually spent and disappeared. If to that rule be added the qualification that if the first withdrawals be invested in losing ventures, then the beneficiary is to have a lien, if he likes, till he uses up that whole investment, and then may elect to fall back for the balance upon the original mixed account from which the withdrawal was made, there is no objection, but it is a very clumsy way of saying that he may elect to accept the investment if he likes, or to reject it. The last is the only rule which will preserve to the beneficiary the option which he has when the investment is made wholly with his money. Suppose, as here, that the trustee deposits the money with his own in a bank. That is an investment. We call it a deposit, but we all know that it is only a chose in action. The beneficiary has the right at his election either to be-

come a part owner in this chose in action, or to keep a lien upon it. Suppose he chooses to be a part owner; then, when part of it is released by payment, he is likewise a proportionate co-owner in the money paid. If that money is in turn invested he is a proportionate co-owner in that new investment, and there is no ground why as to that investment likewise he should not have, at his election, the right to become a lienor pro tanto. Sir George Jessel's dictum in his judgment in Knatchbull v. Hallett at page 710 did not deny this, if the words are nicely observed. He says that in the case of a purchase with a mixed fund 'the cestui que trust, or beneficial owner, can no longer elect to take the property, because it is no longer bought with the trust money purely and simply.' No one can dissent from that statement of the law. Then he at once follows it by saying that he does have a charge, which, likewise, no one disputes; but he nowhere says that he has only a charge, and may not have pro tanto an ownership. Two chancellors, Lord Brougham and Lord Cottenham, had previously said that the beneficiary might have such an ownership, and later in Re Oatway it became apparent that, if not, then very great wrong could be done. Sir George Jessel was a very great equity judge, and no one should lightly differ with him, but there is no reason in this case to impute to him anything of the kind here suggested, or to press the fiction of a presumed intent to a conclusion which is out of harmony with the rights of a beneficiary in the analogous case where there has been no mingling of the funds."

On appeal, the decision in the above cited case was reversed, but only on the ground that both parties were engaged in a joint fraudulent undertaking, and came in with unclean hands; the views of Judge Hand, above

quoted, were not commented on. Primeau v. Granfield, 193 Fed. 911, C. C. A. 2; cert. denied 225 U. S. 708, 56 L. ed. 1267.

In Fiman v. State of So. Dakota, 29 Fed. (2d), 776, 781, C. C. A. 8, the court recognized the authority of Brennan v. Tillinghast, and applied the principle thereof to the tracing of the state's deposits with a bank into the bank's accounts with its correspondent banks. The court said: "Nor can we see any reason why the state could not trace its funds into the accounts of the correspondent banks and treat them as separate accounts from the general cash assets of the bank. See Brennan v. Tillinghast, (C. C. A.) 201 Fed. 609. . . . The tracing of funds into the several correspondent banks was direct and certain, and in the absence of showing of dissipation, came into the hands of the receiver, and plaintiff was entitled to that amount upon which it had a lien in the commingled fund."

The author of the excellent annotation in 82 A. L. R., says at page 160: "The presumption in question, being based upon a fiction invented solely for the protection of the cestui que trust, should not be applied in such manner as to defeat his rights. The application of the presumption would have that effect in a case where the bank withdrew and preserved, by investment or in another fund, a part of the fund with which the trust fund had been commingled, and subsequently dissipated the residue of the commingled fund; and the better view, as pointed out by Professor Scott in 27 Harvard L. Rev. 125, 132, is that the part of the common fund left after the first withdrawal, and later dissipated by the bank, will not be presumed to be or represent the trust fund. In other words, in

such case, the part first drawn out will not be presumed to have belonged to the trustee."

With these views I agree, and, in the existing absence of any pronouncement from the Circuit Court of Appeals in the 9th Circuit, I think they should be given effect, unless the Supreme Court of the United States has clearly pronounced otherwise. If any disagreement should be found among the Circuit Courts of Appeals, the position adopted in the 6th Circuit, in Brennan v. Tillinghast, supra, should be adopted here, because, as it seems to me, it is thoroughly sound.

The only case in the Supreme Court, having any immediate bearing, is Peters v. Bain, 133 U. S. 670, 33 L. ed. 696 (1889), and I do not think this case compels a reversal of the views above taken. A private banking firm, by a fraudulent abuse of power, absorbed moneys from a national bank. "The money received by the firm from the bank was generally mingled with that which was got from other sources, and it has been impossible to trace it directly into property now in the hands of the assignees" of the firm, except in some specified instances, where the property was "purchased with moneys that can be identified as belonging to the bank." As to the latter, a trust was declared by the Court; and the identification in those instances was direct and specific, because "no money was used in these purchases other than such as was taken directly from the bank for that purpose." As to the other purchases, however, the Court said: "There the purchases were made with moneys that cannot be identified as belonging to the bank. The payments were all, so far as now appears, from the general fund then in the possession and under the control of the firm. Some of the money of the bank may have gone into this fund,

but it was not distinguishable from the rest. The mixture of the money of the bank with the money of the firm did not make the bank the owner of the whole. All the bank could in any event claim would be the right to draw out of the general mass of money, so long as it remained money, an amount equal to that which had been wrongfully taken from its own possession and put there. Purchases made and paid for out of the general mass cannot be claimed by the bank, unless it is shown that its own moneys then in the fund were appropriated for that purpose. Nothing of the kind has been attempted here, and it has not even been shown that when the property in this class was purchased the firm had in its possession any of the moneys of the bank that could be reclaimed in specie. To give a cestui que trust the benefit of purchases by his trustee, it must be satisfactorily shown that they were actually made with the trust funds."

There was thus before the court nothing but the bare fact that money had been received and money had been invested. It was impossible to ascertain any of the facts regarding the account which are shown in the present case. "The books of the firm are entirely unreliable. In fact, no general ledger was ever kept, and transactions to enormous amounts can only be traced by memoranda on slips of paper with the help of the explanations of R. T. K. Bain, who was the principal manager. No accounts at all were kept with the bank, and everything, so far as Bain & Bro. were concerned, was found in the greatest confusion." When and in what items the moneys were received from the bank, when and in what items other moneys were received and commingled with the former, whether the mingled account was at any time exhausted, what, if any balance, remained therein at any time, what,

if any, was the lowest balance at any time, when and in what amounts and in what properties investments were made from the mingled fund, whether a low balance was exhausted at any time by an investment, what, if any, part of the trust money remained after an investment for application on a subsequent investment,—none of these things was shown, nor could they be shown; and it was necessary to show them, on any theory of the case. They have been shown in the present case with precision. The question of applying the principle here relied on did not present itself in the Bain case. It was not mentioned; and for the reason that the case lacked the facts upon which alone the question could arise. The point now under discussion was accordingly not involved, and could not be involved. There is, in my opinion, nothing in Peters v. Bain which prevents the application of the rule of In re Oatway and Brennan v. Tillinghast.

As for the Circuit Courts of Appeals, it is said in Empire State Surety Co. v. Carroll County, 194 Fed. 593, 605, C. C. A. 8, (1912), that "because the legal presumption is that he regarded the law and neither paid out nor invested in other property the trust fund, but kept it sacred," "the legal presumption is that promissory notes, bonds, and other property coming to the hands of the receiver were not procured by the use of, and are not, trust property. Spokane County v. First Nat. Bank, 68 Fed. 979, 980, 16 C. C. A. 81, 82." But Brennan v. Tillinghast was decided later, on full consideration of the precise point here made; while the earlier case merely assumed, without discussing, the so-called "presumption," and neglected the all-important feature of that "presumption," that it relates only to dissipations, and not to retentions in a substituted form. The language of the Circuit Court

of Appeals, 9th Circuit, in Spokane County v. First Nat. Bank, 68 Fed. 979, 980 (1895), is subject to the same and additional comment, and despite that language, I am still persuaded that there is no pronouncement in the 9th Circuit which requires the court here to reject the sound rule of In re Oatway and Brennan v. Tillinghast.

In the Spokane County case, the court, in passing on a demurrer, said: "But while that presumption" (i. e., "that trust funds have not been wrongfully misappropriated") "would prevail as to money on hand, it would not be extended to other assets, for the officers of the bank had as little right to divert the public funds into investment in other property as they had to appropriate them to their own use." This, with every respect, amounts to saying that the bank, because it had no right to invest the public moneys at all, had the right to appropriate the investment of public moneys to its own use. The result is to give the purchased property to the tort-feasor, because he has violated the law. In some way, the commission of a second wrong is supposed to rectify the first. The fallacy which leads to such an intolerable result lies in a misconception of the estoppel. A tort-feasor is not estopped to say that he has preserved the estate; he is estopped to say that he has dissipated it. Now, he may be prohibited by statute from investing it, yet if he does so, for a solvent property, he has preserved it and not dissipated it; and there is no question of estoppel at all. Whether he preserves the trust estate by making a good investment unlawfully, or does so by making it lawfully, is entirely indifferent. If in the latter case he cannot claim it for himself, it is impossible to see why he should have it for himself because in acquiring it he has misapplied the fund. He has already misapplied it in ming-

ling it with his own, and that does not advantage him; why should his additional misapplication in converting it into property cancel the first wrong and restore his advantage? There is, in fact, no presumption against his having done a wrong, either in the first instance or in the second; there is an estoppel, which prevents his profiting by either. The Spokane County case antedates In re Oatway and Brennan v. Tillinghast, in which the subject was carefully discussed, and it is plain that none of these considerations was presented in the former case. The court's remark is brief, and occurs in the midst of comments on the sufficiency of a bill. Its expression, above quoted, is not, as it seems to me, to be given the weight of a final pronouncement, binding on the court here.

Indeed, the Circuit Court of Appeals in the 8th Circuit, has somewhat recently held to the contrary of the expression in the Spokane County case. In Finan v. State of South Dakota, 29 Fed. (2d) 776, 781, where a bank acted in violation of a statute in regard to the deposit of public money, it was held that this violation did not exempt the bank from the operation of the estoppel in question. The court said: "We are unable to see why the presumption should not prevail, despite the fact that the bank was acting illegally for a long period of time, or acted illegally in other particulars."

What has been said as to Peters v. Bain applies in substance to Board v. Strawn, 157 Fed. 49, C. C. A. 6 (1907). The attempt was "to fasten a trust fund upon hundreds of distinct pieces of commercial paper made by many different persons and acquired at different times, because it is probable that some of such bills and notes were ac-

quired with the general funds of the bank with which had been mingled some part of complainants' tax deposits. . . . Complainants have not shown that any single piece of that mass of bills and notes was acquired with the blended moneys of the bank and of the tax fund, still less are they able to show that the assets in the receiver's hands have been actually augmented by a dollar collected from paper so paid for by the mingled fund." In that state of the evidence, of course there could be no identification.

The same remarks may be made about Schuyler v. Littlefield, 232 U. S. 707, 58 L. ed. 806. The difficulty was the same as in Peters v. Bain; that is, a defect of evidence. In passing on an attempt to trace the trust fund into stock released as collateral from the hands of a bank, the court said: "But the record fails to show when the $266,600.00 was deposited, and it also fails to show with the requisite certainty the particular use made by Brown & Company of that money."

Indeed, in the cases which may be thought to question the right to attribute investments to the trust, it will be found uniformly, I believe, that the attempt is to impress a trust without a showing beyond the fact of the mingled fund and the fact of the investment. In the present case, the intervenor has supplied the additional facts necessary to relate a specific low balance, containing the trust money, to a specific investment.

I am convinced that there is nothing in the doctrine of the Hallett case to prevent the attributing of the investment to the trust fund, and the subsequent dissipation of money to the tort-feasor's own funds; and on the contrary, that it is required.

(b) It is urged that if this be true at all, it is only so in the case of a voluntary trust. The argument is that in a trust ex maleficio, such as the present, it is absurd to presume that the person whose faithlessness has made him a trustee must intend faithfully to preserve the money for the person he has defrauded, and that it is rather to be presumed that he will continue faithless and effectively finish in his own interest what he began in that interest.

Here again is a misconception of the doctrine of the Hallett case. The rule which refuses, in the absence of earmarking, to allow the trustee to say that he has dissipated his cestui's money rather than his own, is not truly based on a presumption of his intention, and it is not really concerned with his intention at all, imaginary or otherwise; it is a rule of substantive law, founded upon an equitable estoppel. The remarks already made on this subject are, I think, a sufficient answer to the present contention.

When the voluntary trustee, in acquiring property, out of the mixed fund, is held to have retained the same fund, including the trust money, in a new form, and with the same benefit to the cestui, it is not because of any supposed desire of the trustee to remain honest, but because the fund remains the same, and because the trust money, once in it, remains in it, whatever the form. The involuntary trustee is in the same situation. However wrongfully he may have acquired the money, and however dishonest his actual intention throughout, the mixed fund, if it includes the trust money, continues to do so in any supposable form, not because he intends it, nor even despite his contrary desire, but because it is the same thing, unchanged in substance.

This point of view assumes that the mixed fund, at the time of investment, contains the trust money; and it is only in reference to the propriety of that assumption that the doctrine of the Hallett case has any pertinence; for once admit that the mixed fund contains the trust money, there is nothing to consider but the fact of the latter's continuance in the fund, unchanged but in form. If the estoppel in question obtains in the case of an involuntary trustee, the mixed fund does necessarily contain the trust money, within the limit of the lowest balance. There can be no doubt of this in the case of a voluntary trustee. That an involuntary trustee is subject to the same estoppel is clear from a correct understanding of the reason and object of the estoppel, and is apparent from those decisions which disclose such an understanding. Counsel have said that the federal courts are silent on this question, but it appears that they have announced views according with the above.

In Central Nat. Bank v. Conn. Mut. Life Ins. Co., 104 U. S., 14 Otto 54, 26 L. ed. 693, 700, the Supreme Court analyzed the holding of the Hallett case, and among other things said that that case held "that there is no distinction between an express trustee and an agent or bailee or collector of rents or anybody else in a fiduciary position." The principles of the Hallett case are approved by the Supreme Court and its approval attaches to the doctrine just quoted. It is true that mention is not specifically made of a trust arising out of fraud, but the doctrine approved extends, as stated, to "anybody in a fiduciary position," and certainly the trustee ex maleficio is in that position.

In Smith v. Mottley, 150 Fed. 266, 268, C. C. A. 6 (1906), the court said: "The question which we have

before us comes then to this: Did the petitioner, in the circumstances stated, have a lien upon the assets of the bank for her money, which by the wrongful conduct of the bank was incorporated in them?

"We think that upon the authority of our own decisions, and especially that of Smith, Trustee, v. Township of Au Gres (decided at our session in November last) 150 Fed. 257, this question should be answered in the affirmative. The question as there presented was raised in the same way and upon substantially identical facts. In that case the property of the township had been confided to the bankrupt, and he had committed a breach of trust in converting it to his own use and mingling it with his stock of goods, while here the possession of the property was wrongfully taken in the first instance. But it makes no difference in the application of the principle of that decision that in one instance the wrongdoer was lawfully in the possession of the property and in the other not. The critical fact is in the wrongful appropriation by one party of the property of another by mingling it indistinguishably with his own, and it is not ordinarily important by what means he became possessed of the property.

"Other cases in which we have recognized and applied the doctrine of the case just cited are City Bank v. Blackmore, 75 Fed. 771, 21 C. C. A. 514, In re Taft, 133 Fed. 511, 66 C. C. A. 385; Holder v. Western German Bank, 136 Fed. 90, 68 C. C. A. 554, and Erie R. Co. v. Dial, 140 Fed. 689, 72 C. C. A. 183. Upon the same facts as in the case of Holder v. Western German Bank, the Circuit Court of Appeals for the Fifth Circuit applied the same principle in reaching a like result. Western German Bank v. Norvell, 134 Fed. 724, 69 C. C. A. 330."

In Richardson v. New Orleans Deb. Red. Co., 102 Fed. 780, C. C. A. 5 (1900), a bank obtained money by fraud. The court said: "Now, if the banker, having money in his bank, fraudulently receives other money and mingles it with the moneys on hand, can the defrauded depositor claim his money? That is the question presented by this case." The court held that a trust arose by reason of the fraud and we accordingly have a case of a trustee ex maleficio as in the present instance. The Hallett case was reviewed and its doctrine was declared applicable to an involuntary trustee. The court said: "If an agent, bailee, or trustee invests another's money in personal property, a trust results. If one's money is lent, and a note or bond taken, the owner of the money can have a lien or trust declared on the note or bond to secure his money so used. Numerous cases show that money can be traced into other assets, notes, bonds, and stocks. There is no good reason for not applying the same doctrine to money, the measure and representative of all property. If one's money is used with other money in buying a bond, equity can fasten a lien on the bond, and sell it to reimburse the one whose money has been so used. So, we think, if one's money is wrongfully mingled with a mass of money, that equity can direct the possessor and wrongdoer, or his successor, to take out of the mass a sum sufficient to make restitution." (Underscoring mine)

In Fiman v. State of So. Dakota, 29 Fed. (2d), 776, 781, C. C. A. 8, a case of a wrong-doing bank violating a statute in regard to the deposit of public moneys, the court said: "We are unable to see why the presumption should not prevail, despite the fact that the bank was act-

ing illegally for a long period of time or acted illegally in other particulars."

In First National Bank v. Fidelity & Deposit Co., 48 Fed. (2d) 585, C. C. A. 9, the court held that the bank was a trustee ex maleficio, because it received public moneys on deposit from a county treasurer in excess of the amount authorized by the Board of County Commissioners. The court held: "The act of the bank in receiving them was therefore clearly wrongful and in violation of law." The court held that the county had a good claim against the bank's receiver for the smallest amount of cash and cash items in the bank between the time of unlawful deposits and the close of the bank.

The federal courts have accordingly repudiated any supposed distinction between trusts arising by agreement and trusts arising by fraud. The views of an independent commentator to the same effect are found in the note in 82 A. L. R., as follows: "The argument that the logical basis of the presumption is absent where the trust comes into existence by virtue of the wrongful act of the (trustee) has much plausibility as a mere dialectical exercise; but the law is designed for the practical administration of justice, rather than as a vehicle for the development of logical subtleties. Logic is not an end in itself, but a means to an end; the true end of the law is justice. The relation of logic to the law is as a tool, rather than as a tyrant; otherwise it would be the death of the law, and not its life. The fiction in question was invented for the benefit of the cestui que trust in cases where his trust money is commingled with the funds of the trustee, and it should not be followed to its logical conclusion where to do so would defeat recovery in a case no less meritorious than those in which it

is employed in aid of a recovery. There should be consistency in results rather than merely in the steps employed in reaching a result.

"With regard to the presumption in question, it is stated by Professor Austin W. Scott, in 27 Harvard L. Rev. 125, 129: '. . . The claimant ought . . . to have an interest in what is left, not because of any intent of the wrongdoer, but because the wrongdoer, whatever his intent, should not be allowed, by taking away a part of the fund, to deprive the claimant of his lien on, or share of, the rest of the fund.'" (P. 160).

Some of the state courts, including the Supreme Court of California, have refused to apply the doctrine of the Hallett case to an involuntary trustee. This supposed distinction is enforced in People v. California Safe Dep. & Tr. Co., 175 Cal. 756, in which it is said that "Whatever name be given to it, the rule originates in and rests upon the underlying presumption 'that a person is innocent of crime or wrong.'" With all proper respect, it does not so originate. It originates in and rests upon an underlying estoppel whereby a wrongdoer is prevented from arrogating to himself the benefit of his own wrong. This decision, like others, is, in my opinion, based upon a misconception of the rule as a mere presumption or fiction contingent upon an imagined intention of the trustee. This misconception has led to an exceedingly unjust gift to the guilty and penalty to the innocent. The considerations which have been heretofore mentioned were not discussed by the California court, its attention being directed exclusively to a literal and verbal construction of a so-called presumption of intent. On reason the views expressed in the California case should, in my opinion, not be followed. This court is not bound thereby and the

federal courts, as above seen, have, upon sound grounds, reached an opposite conclusion, which, I think, should be here recognized as authority.

It is my opinion that a trustee ex maleficio is, like any other, estopped to attribute his dissipations first to the trust fund.

(c) It is contended that the case cannot be decided on a doctrine of estoppel or a presumption, but that there must be a clear showing, by direct evidence, of an actual and intended appropriation of the invested money to the purposes of the trust; and that this must be so, at least, on receivership, where the equities of general creditors intervene.

It is thought that Peters v. Bain, 33 L. ed. 696, supports the generalisation first mentioned. I have already discussed this case, and, as previously said, it decides no more than that proof merely of the mixed fund and of purchases thereout is insufficient. On such proof, it was insisted that the receiver of the defrauded bank was "entitled to a charge upon the entire mass of the estate." (P. 704) The only specific evidence offered was that in one case property was received from a debtor in payment of his note made to the defrauded bank, which Bain & Bro. had rediscounted. This of course, as held, was not proof that Bain & Bro. "were purchasing property with the money of the bank." (P. 705). The evidence necessary for bringing into play the principles now in question was not and could not be produced, due to the utter confusion of the accounts. Nothing is said to indicate that the proof would have been insufficient if it had been produced. The court said that the difficulty was the same as that expressed in Frelinghuysen v. Nugent,

36 Fed. 229, 239, "that it does not appear that the goods claimed . . . were either in whole or in part the proceeds of any money unlawfully abstracted from the bank." (P. 704). All that this amounts to is that there must be evidence of some kind; but whether it must be of one kind and not another the court does not say, and is not called on to say. The case, and all the other cases which simply declare the necessity of proof, leave open the method by which the proof may be adduced; and the cases which deal specifically with the Hallett estoppel as a method of proof uniformly approve it. Thus, Schuyler v. Littlefield, 232 U. S. 707, 58 L. ed. 806, approving a particular feature of the rule in Hallett's case, merely holds that "the record fails to show when the (money) was deposited, and it also fails to show with the requisite certainty the particular use made by Brown & Company of that money." Here, as in the other cases on this subject, it is a matter of the absence of proof; both of the kind presented in the case now at bar, and of any other.

Up to the time of the investment in property, the estoppel in question, as is well settled, operates as an effective means of tracing the trust money into the mingled fund. The investment does no more than change the form of the fund. It is hard to perceive why this mere change of form should abolish the evidence of the pre-existing condition, which was perfectly competent to prove it. That evidence being properly received, the effect of it remains, whether the subject affected be money or bonds, or both.

The requirement suggested would in most cases of fraud, if not all, demand the impossible. It would compel the earmarking of the invested money, in a case which by

its terms presupposes a mingling. How this could be shown, does not appear. Obviously, the faithless fiduciary will not expressly set apart one portion for investment for the trust and another for investment for himself. If he must make such an express appropriation, there can hardly be a case of recovery, unless the money remains as money. In the latter case, there is no such requirement of express appropriation or earmarking; the whole mass remains subject to the trust. Why should there be, when the mass includes, by substitution, bonds or stock? The principles which govern the fiduciary's accountability do not fluctuate with the form.

"Proof that a trustee mingled trust funds with his own and made payments out of the common fund is a sufficient identification of the remainder of that fund coming to the hands of the receiver, not exceeding the smallest amount the fund contained subsequent to the commingling. . . ." Empire State Surety Co. v. Carroll County, 194 Fed. 593; also, Fiman v. State of So. Dakota, 29 Fed. (2d) 776, 779, C. C. 8, and federal cases there cited, hereinbefore referred to. Such proof being sufficient as to "the remainder of the fund," it is sufficient as to the intervening status of the fund at the time of any change in the form thereof.

The character of proof is not changed by receivership. The receiver gets nothing more than his principal had; and he takes subject to all the equities. The marshalling of claims against the estate does not put into the estate what was not there.

In a case in which a State sought to pursue its bank deposits as a trust fund in the hands of the bank's receiver, and in which the court held the beneficiary entitled

to the estoppels and so-called "presumptions" hereinbefore discussed, the court said: "The receiver stands in the place of the bank, taking the assets in trust for the creditors, subject to the claims and defenses that might have been interposed against the insolvent corporation. Skud v. Tillinghast (C. C. A.) 195 Fed. 1, 5; Scott v. Armstrong, 146 U. S. 499, 13 S. Ct. 148, 36 L. ed. 1059." And lest it be thought that this applied only to the unchanged remainder of a cash fund in the hands of the fiduciary, it should be particularly noted that the court permitted the fund to be followed into its changed form, to-wit, into the fiduciary's deposits with correspondent banks, and this under the cited authority of Brennan v. Tillinghast, 201 Fed. 609. The case seems to be definitely in point: Fiman v. State of So. Dakota, 29 Fed. (2d) 776, 781, C. C. A. 8.

Practically all of the federal cases involving the method of proof here in question are receivership and bankruptcy cases, and it would be useless to cite them. Those which have previously been cited are of that class. Nowhere does it appear that receivership or bankruptcy makes any difference in principle or method.

My opinion is that in this receivership proceeding, as in a proceeding against the fiduciary himself, and in an attempt to follow the trust money into property bought out of the common fund, as in an attempt to follow it into a common money fund, the facts shown, with the consequent estoppels, constitute a sufficient tracing and identification.

(d) It is urged that in any event the purchase must be made at the moment of the lowest balance, before any accretion thereto of moneys belonging to the fiduciary, and

before any disbursement otherwise from the common fund. This is for the reason that subsequent transactions with the account may as well be attributed to the previous low balance as to the new money, and moneys then invested in property may represent a residue of owned money and not trust money. This has already been answered, if my views upon the main questions are sound. No matter when the investment is made, the lowest amount meanwhile in the account has always been there, and is there at the moment of investment; because at no time will the fiduciary be allowed to say that he has dissipated the trust money rather than his own. If this principle is well established, as it must be held to be, it cannot matter when the low balance occurs, so it be between the deposit of trust money and the investment; for the fiduciary has at all times spent his own money and preserved the trust money. I do not think there is any merit in the contention.

–IV–
INTEREST

In my opinion, no interest should be allowed.

It is very well settled that where trust money in the hands of a receiver is earmarked, or is identified by its inclusion in a common fund, within the limit of the lowest intervening balance, no interest is allowable, either before or after receivership. First Nat. Bank v. Fidelity & Dep. Co., 48 Fed. (2d) 585, C. C. A. 9; Poisson v. Williams, 15 Fed. (2d) 582, D. C., E. D. N. Car.; Smith Reduction Corp. v. Williams, 15 Fed. (2d) 874, D. C. E. D. N. Car.; Butler v. Western German Bank, 159 Fed. 116, C. C. A. 5; Hallett v. Fish, 123 Fed. 201, C. C., D. Ver-

mont; Richardson v. Louisville Banking Co., 94 Fed. 442, C. C. A. 5; Merchants' Nat. Bank v. School District, 94 Fed. 705, C. C. A. 9; Elizalde v. Elizalde, 137 Cal. 634, 638. Two of these cases, as observed, are from the 9th Circuit.

None of the above authorities is concerned with a case of investment of the trust money, and no authority of that precise application has been found. But the reasons which lead to the cited decisions would seem to apply as well, whether the ultimate form of the fund be money or property or both. In any case, the beneficiary receives back his own, and is entitled to no more, whether by way of interest as damages or otherwise. It is true that Richfield acknowledged an obligation to pay interest; but the right here is not based on agreement, but on an obligation arising by operation of law; in fact, the recognition of a binding agreement would be fatal to Universal's right as a defrauded cestui. If $1000.00 of trust money is traced into a property which cost that much and no more, the property belongs wholly to the cestui; he gets the property, and nothing more. If $1000.00 of trust money is traced into a property which cost $2000.00, he gets the property likewise, to the extent of $1000.00; and his property interest, by the same logic, is not increased by interest. Otherwise, where $1000.00 of trust money is traced into a common fund of $2000.00 in money, he would be entitled to interest; but the cases above cited hold otherwise. Here, as elsewhere, his rights do not fluctuate with the form.

-V-

COUNTER CLAIM OF RECEIVER FOR PAYMENTS ON PROPERTIES

The receiver claims a lien, prior to Universal, for payments made by him on the purchase price of certain properties in question. This is on the ground that the payments preserved the title for Universal's benefit. No authorities are cited for the point, and the authorities cited against it are not very helpful. Hanover Nat. Bank v. Suddath, 215 U. S. 122, 54 L. ed. 120; Cook Co. Nat. Bank v. Burley, 107 U. S. 445, 27 L. ed. 537; Topas v. John MacGregor Grant, Inc., 18 Fed. (2d) 724, C. C. A. 2; Poisson v. Williams, 15 Fed. (2d) 582, D. C., E. D. N. Car.; Am. Brake Shoe & Foundry Co., 10 Fed. (2d) 920, C. C. A. 2. These are to the effect that a trustee cannot set off against his trust obligation an obligation owing to him individually by the beneficiary. This is not quite the situation here, but other considerations are, I think, fatal to the claim. The payments were merely on account of the purchase price, and they stand in the same position as payments on the purchase price made by Richfield itself. If Richfield paid $1000.00 for a piece of property, of which $500.00 was its own money and $500.00 was Universal's, obviously Universal's right would be first; otherwise everything heretofore said would be meaningless. The receiver is in no better position. If his payments preserve the title, they do so for Richfield; and the merely incidental benefit to Universal does not reverse the primary fact. Moreover, if the benefit to Universal is to be considered, it was the duty of Richfield and its receiver to preserve to Universal the title which Richfield had undertaken to procure for it. Richfield and its

estate would no doubt have been liable to Universal for the loss of the latter's title, having intermingled that title with its own and having itself caused the former to depend on the latter. In addition, Universal's right was prior in time, and the payments were made with implied, if not actual, notice of that right. Payments made subsequently by Richfield itself would certainly be subject to the known existing right of Universal; and the receiver's payments are in the same inferior position.

No lien should be allowed to the receiver for his payments.

–VI–

STATUS OF THE BOND TRUSTEE

The trustee has not claimed any priority, but counsel for Universal have discussed the possible point, and it should perhaps be noticed. All of the payments in question out of trust funds were made after the date of the trust indenture. The interests acquired by those payments could only be regarded as included in the indenture by virtue of a clause thereof extending the lien to after-acquired interests, assuming the existence of such a clause. It is true that a bona fide purchaser or encumbrancer, for value, without notice, will be protected. Peters v. Bain, 133 U. S. 670, 33 L. ed. 696; Omaha Nat. Bank v. Fed. Res. Bank, 26 Fed. (2d) 884, 887, C. C. A. 8; Jones v. Missouri Edison Electric Co., 144 Fed. 765, 780, C. C. A. 8; Spokane County v. First Nat. Bank, 68 Fed. 979, 980, C. C. A. 9; Ervin v. Oregon Ry. & Nav. Co., 27 Fed. 625, 635, C. C., E. D. N. Y. But it appears to be established that an encumbrancer does not occupy that position in reference to after-acquired

property, that his lien attaches in that case only to what the debtor actually acquires, and that if the latter gets nothing in fact, regardless of appearances, the former gets nothing. Holt v. Henley, 232 U. S. 637, 58 L. ed. 767; Detroit Steel Cooperage Co. v. Sistersville Brewing Co., 232 U. S. 712, 58 L. ed. 1166; Fosdick v. Schall, 99 U. S. 235, 25 L. ed. 339.

The lien of the trust indenture is subject to the trust interest of Universal.

-VII-
RECOMMENDATION

I recommend that a trust be declared and enforced in favor of Universal in the following amounts severally, without interest, upon such right, title, and interest as may appear to be vested in Richfield and its receiver, and superior to any right, title, interest, or lien of the trustee under the bond indenture, in and to the following properties severally, as identified at page 41, supra, and described in Receiver's Exhibit F:

Parcel 1:	"Franklin & Vermont Service Station," real property, described at page 1 of said Exhibit	$ 492.60
Parcel 2:	"Delaney Producing Property," leaseholds, described at pp. 28 et seq. of said Exhibit	103,442.33
Parcels 3 and 4:	Ten storage tanks, personal property, described at pp. 2 and 3 of said Exhibit	91,881.83

Parcel 5:	"Mull Property," real property, described at p. 19 of said Exhibit	500.00
Parcel 6:	"Vapor Recovery Plant," personal property, described at p. 25 of said Exhibit	34,332.84
Parcel 7:	106,000 shares of Universal stock, certs. LX:26, 27, 28, and 32	162,719.30
Parcel 8:	5,100 shares of Universal stock, cert. LX31	10,625.00
		$403,993.92

For the enforcement of said trusts, respectively, I recommend that upon any sale in this action, the aforesaid parcels be offered for sale and sold separately from each other and from all other property, and that Universal be allowed a first charge upon the gross proceeds of the sale of each of said parcels, in the amount above specified in respect thereof, the expense of each sale to be a charge upon any surplus realized from such sale over the amount receivable as aforesaid by Universal, and in defect of such surplus, upon the receivership estate held under the order of appointment of January 15, 1931, as an expense of administration. I recommend that jurisdiction be retained for the purpose of awarding such other relief as may appear to be equitable, for the enforcement of said trust, in case there shall be a failure to effect a sale in the case of any parcel or parcels.

As to Parcels 3 and 4, and Parcel 6, there is no evidence as to whether, or to what extent, they are attached to the land, or whether, or to what extent they are removable. There is no presumption that they are irremovably affixed to the realty in such manner as to be a part thereof. They are therefore treated as removable personal property, and the trust attaches to them as such. Even if there were difficulty in detaching or removing them, due to their being affixed in some degree (and of this there is no evidence), the application of the trust to them as personal property would not be affected. Holt v. Hanley, 232 U. S. 637, 58 L. ed. 767; Detroit Steel Cooperage Co. v. Sistersville Brewing Co., 232 U. S. 712, 58 L. ed. 1166.

There are filed herewith, as part of this report (a) Reporter's Transcript of the Proceedings and Evidence, (b) Exhibits, and (c) Briefs. I certify that the Reporter's Transcript and the Exhibits filed herewith contain all the proceedings and evidence upon which this report is made.

Respectfully submitted,

WILLIAM A. BOWEN
SPECIAL MASTER"

EXCEPTIONS TO REPORTS OF THE SPECIAL MASTER.

Timely exceptions to the reports of the Special Master were filed with the Clerk of the United States District Court by Security First National Bank of Los Angeles as trustee, which exceptions read as follows:

"In the District Court of the United States, for the Southern District of California, Central Division.

-oOo-

Security-First National Bank of Los Angeles, a national banking association, as trustee, Plaintiff, vs. Richfield Oil Company of California, a corporation, and William C. McDuffie, as Receiver of Richfield Oil Company of California, a corporation, Defendants. Universal Consolidated Oil Company, a California corporation, Intervenor.	In Equity Consolidated Cause No. S-125-J. EXCEPTIONS OF PLAINTIFF SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, A NATIONAL

The Republic Supply Company of California, a corporation,	)	BANKING ASSOCIATION, TO MASTER'S REPORT.
Complainant,	)	
vs.	)	
Richfield Oil Company of California, a corporation,	)	
Defendant.	)	

Now comes SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, plaintiff in the above entitled cause, and excepts to the report of the Honorable William A. Bowen, Special Master herein, filed in the office of the clerk of this court on the 26th day of May, 1933, in the following particulars, to-wit:

1. To the finding of fact and/or conclusion of law (Report p. 82, line 26) that the lien of the bond or trust indenture sought to be foreclosed herein is subject to the trust interest of intervenor, Universal Consolidated Oil Company, a corporation, as found and declared by said Special Master as to the parcels of property specified in said report.

2. To the finding of fact and/or conclusion of law (Report p. 76, line 24) that said intervenor has sufficiently

identified and traced its funds into the various parcels specified in the report of said Special Master and hereinafter specified, either in the amounts set forth or otherwise.

3. To the finding of fact and/or conclusion of law (Report p. 57, line 13) that the various parcels specified in said report and hereinafter specified either in toto or to the respective amounts or to the extent of the trust imposed upon them in favor of said intervenor constitute the property of intervenor in a substituted form.

4. To the conclusion of law (Report p. 83, line 4) that said intervenor is entitled to have a trust imposed upon the various parcels specified in said report and hereinafter specified either in the amounts specified therein or in any amounts whatever.

5. To the conclusion of law (Report p. 76, line 24) that the evidence herein constitutes a sufficient tracing and identification of the funds of said intervenor to warrant the imposition of a trust in favor of said intervenor upon the various parcels specified in said report and hereinafter specified either in the amounts set forth therein, or in any amounts whatever.

6. To the conclusion of law (Report p. 67-a, line 6) that the investments revealed by the evidence (to wit, the purchases by defendant Richfield Oil Company of California, a corporation, of the parcels specified in said report and hereinafter specified) should be attributed either in whole or in part to the trust funds of intervenor then

and there in the possession of said defendant and commingled with private funds belonging to said defendant.

7. To the conclusion of law (Report p. 67-a, line 6) that in the case of purchases of real or personal property made by a trustee out of a fund in which trust and private funds had theretofore been commingled, the trust moneys may be traced into such properties wholly through the application of presumptions and wholly without evidence of any actual devotion of such trust funds or any part thereof as distinguished from the commingled funds to the respective purchases in question.

8. To the failure of said Special Master to conclude that the evidence was insufficient to support a finding that intervenor had actually traced into the parcels specified in said report and hereinafter specified any of the trust funds of intervenor formerly in the possession of defendant Richfield Oil Company of California, a corporation, as distinguished from the commingled fund in which said trust funds and the private funds of said defendant were blended.

9. To the failure of said Special Master to conclude and to declare that mere proof of purchases out of a fund in which trust and private moneys have been commingled is wholly insufficient to warrant the imposition of a trust upon the property so purchased.

10. To the recommendations, and each of them, of said Special Master as embodied in his said report (p. 83, line 4), to-wit:

(a) That a trust be declared and enforced in favor of Universal Consolidated Oil Company, a corporation, in the amounts specified below and upon such right, title and interest as may appear to be vested in Richfield Oil Company of California, a corporation, and its receiver, and superior to any right, title, interest or lien of this plaintiff under the bond or trust indenture sought to be foreclosed herein in and to the following properties and parcels described in said report, to-wit:

Parcel 1.	"Franklin & Vermont Service Station", real property.	$ 492.60
Parcel 2:	"Delaney Producing Property", leaseholds.	103,442.33
Parcels 3 and 4:	Ten storage tanks, personal property.	91,881.85
Parcel 5:	"Mull Property" real property.	500.00
Parcel 6:	"Vapor Recovery Plant", personal property.	34,332.84
Parcel 7:	106,000 shares of Universal Stock, Certs. LX:26, 27, 28 and 32	162,719.30
Parcel 8:	5,100 shares of Universal stock. cert. LX 31	10,625.00
		$403,993.92

(b) That upon any sale to be had in this action the aforesaid parcels be offered for sale and sold separately from each other and from all other property, and that Universal Consolidated Oil Company be allowed a first charge upon the gross proceeds of the sale of each of said parcels in the amount above specified in respect thereof, the amount of each sale to be a charge upon any surplus realized from such sale over the amount receivable as aforesaid by said Universal Consolidated Oil Company, a corporation; and

(c) That jurisdiction be retained for the purpose of awarding such other relief as may appear to be equitable for the enforcement of said trust in the event there shall be a failure to effect a sale in the case of any parcel or parcels.

DATED this 15th day of June, 1933.

O'MELVENY, TULLER & MYERS
and Pierce Works
and Clinton La Tourette

Solicitors for Plaintiff, Security-First National Bank of Los Angeles, a national banking association."

Timely exceptions to the reports of the Special Master were filed with the Clerk of the United States District Court by Universal Consolidated Oil Company, which exceptions read as follows:

"In the District Court of the United States
Southern District of California
Central Division

The Republic Supply Company of California, a corporation, Complainant, -vs- Richfield Oil Company of California, a corporation, Defendant.	
Security-First National Bank of Los Angeles, a national banking association, as trustee, Plaintiff, -vs- Richfield Oil Company of California, a corporation, and William C. McDuffie, as Receiver of Richfield Oil Company of California, a corporation, Defendants.	IN EQUITY CONSOLIDATED CAUSE NO. S-125-J
Universal Consolidated Oil Company, a California corporation, Intervenor.	

EXCEPTIONS TO REPORT OF SPECIAL MASTER

Now comes the UNIVERSAL CONSOLIDATED OIL COMPANY, the Intervenor in the above entitled cause, and excepts to the report of Honorable William A. Bowen, Special Master herein, filed in the office of the Clerk of this Court on the 26th day of May, 1933, in the following particulars to-wit:

AS TO FINDINGS OF FACT

1. To the finding of fact on page 33, lines 3 to 7, inclusive, of the Special Master's Report, reading as follows:

"It is my opinion that the balance which is properly to be used in applying the intervenor's theory here is the third of those above described; that is, that which is shown by deducting all withdrawals posted during the day from the opening balance, without crediting deposits for the day."

2. To the finding of fact on page 33, lines 8 to 14, inclusive, of the Special Master's Report, reading as follows:

"The second above described, which results from periodical postings during the day of deposits and withdrawals, after crediting the opening balance, is not properly usable, for the reason that under the bank's practice, as above detailed, such balance disregards the actual order of deposits and withdrawals in point of time, and conse-

quently does not reflect the true state of the account at any time."

3. To so much of the findings of fact in the Special Master's Report, line 15, page 33, to line 14, page 34, as reads:

"The first above described, the so-called closing balance, is not usable, for the reason that by its nature it necessarily disregards the actual order of deposits and withdrawals in point of time, and consequently does not reflect the true state of the account at any time since the previous closing balance. To take it as an accurate reflection, it must be assumed that at the moment of each withdrawal deposits had been received in an amount sufficient to leave a balance at least equal to that resulting from the whole day's transactions. Unless such an assumption is imperative there is an equal likelihood that at any moment of the day the deposits previously received and the withdrawals then made may have produced a balance less than that resulting from the whole day's transactions down to zero. Admittedly the intervenor is not entitled to the benefit of a replenishment of the account after its reduction or exhaustion, yet the closing balance would necessarily yield that benefit if during the day the account had been reduced or exhausted. Under the burden of proof which is on the intervenor, it can not avail itself of the assumption which is implicit in the closing balance in

default of that direct evidence which might have been provided by the striking of time-regarding balances during the day. The failure of the bank to strike balances of that conclusive character might perhaps in another situation afford some reason for looking to the closing balances as the best evidence of which the case admits in view of banking custom; but in the present situation the intervenor in tracing a trust fund into and out of a common account is bound to better proof than that indicated, and finds it at hand in the facts which support the third description of balances. The other two being inadmissible, the intervenor must content itself with the third, else it must be without any proof at all."

4. To so much of the findings of fact appearing on page 37 of the Master's Report, lines 8 to 11, as reads:

"This disposes of any conception of the closing balance as usable for the intervenor's purpose. It disposes of any contention that the order of time may be disregarded in an inquiry of this sort."

5. To so much of the findings of fact as set forth in line 16, page 37, of the Master's Report, down to and including line 3, page 38, thereof, as reads:

"The result of the aforegoing is that the claim must fail unless there is a minimum situation upon which the intervenor may rely; that is, a situation which assumes

an order of deposits and withdrawals which at the worst must have occurred. Such a situation presents itself in a case where no deposits are made during the day in question, until all withdrawals of that day have been effected. In that case the order of withdrawals is indifferent, as they all precede the deposits. Now, it is a fact that withdrawals and deposits occurred each day, and that there was always an opening balance; whence some sort of balance, on one side or the other, continually resulted. This balance cannot be disregarded altogether, if there is a way of regarding it without detriment to defendants' position, correctly maintained as above stated. This position, that the time order must be observed, is preserved, and the proven existence of balances of some sort is recognized, by treating the deposits of the day as coming in after the withdrawals. * * * The intervenor is entitled to no more, and the defendants must concede so much."

6. To the findings of fact set forth in line 1, page 39 of the Special Master's Report, to line 16, inclusive, page 40 of the Special Master's Report, wherein and whereby the lien of the intervenor is limited upon the properties therein described, by a calculation based upon the low balances of the Richfield Oil Company in its account with the Security-First National Bank of Los Angeles, resulting from the deduction of withdrawals for the day from the opening balance without crediting deposits for the day.

7. To so much of the findings of fact as appear in lines 25 to 32, inclusive, of page 40 of the Special Master's Report, wherein it is found that the amount of the trust funds traced into the items of property described as Parcels 1 to 8, inclusive, as set forth therein, did not exceed the amount set after the various parcels of property, or exceed the total sum of $403,933.92.

8. To the failure of the Master to find that the proper method to be employed in ascertaining low bank balances of the defendant Richfield Oil Company in this case, is to take the closing balance of the Richfield Oil Company in the Security-First National Bank of Los Angeles, after crediting on the books of the bank the opening balance and all deposits for the day, and charging on the books all withdrawals for the day.

8a. To the finding of fact as set forth in line 1, page 39, to line 16, inclusive, page 40, of the Special Master's report, wherein and whereby the Special Master found that the low balance in the bank account of the Richfield Oil Company with the Security-First National Bank on the dates set forth therein was the opening balance in said account on each of said days mentioned less all checks drawn against said account during the same day, and without giving any credits for the deposits made in the said account during the same day. The evidence

shows that the only balance recognized by the bank as controlling with respect to said account was the closing balance at the end of each day after giving credit for all deposits made during the day and deducting all withdrawals made during the same day. That the bank treated each day's transactions as an entirety, and without making any attempt to enter checks drawn or moneys deposited in their order of presentation, and that the only balance recognized by the bank as controlling is the balance struck at the end of each day.

9. To the failure of the Master to find that the takings of Universal Consolidated Oil Company's funds by Richfield Oil Company, and the assets purchased by Richfield Oil Company with the commingled funds, and the low bank balances in Richfield's account with the Security-First National Bank of Los Angeles under each of the three theories hereinbefore described, and the amount of trust funds traceable into each asset purchased by Richfield and claimed under each theory, is in accordance with the following tabulation:

TABULATION SHOWING TAKINGS OF UNIVERSAL FUNDS BY RICHFIELD, ASSETS PURCHASED WITH COMMINGLED FUNDS, LOW BALANCES UNDER THREE THEORIES ADVANCED, AND AMOUNT TRACEABLE INTO EACH ASSET CLAIMED UNDER EACH THEORY

(1) Date	(2) Deposit of Universal Money in Richfield Account	(3) Amount Paid on Property Paid for from Commingled Fund	(4) Lowest Daily Closing Balances Between Takings of Universal Funds	(5) Liens Claimed for the Following Sums by Reason of Column 4	(6) Lowest Posted Balances Shown on Bank's Books During Any Day Between Takings of Universal Funds	(7) Liens Claimed for the Following Sums By Reason of Column 6	(8) Lowest Balance Ascertained by Deducting All Checks Cleared Each Day Without Crediting Deposits made During the Same Day	(9) Liens Claimed for the Following Sums by Reason of Column 8	
1929									
Nov 13	$750 000.00		$272 704.61		$209 198.80		$93 635.65		
" 19					198 719.90				
" 27				$50 000.00		$50 000.00		$50 000.00	Delaney group producing properties
" 29		$50 000.00		44 540.00		44 540.00)			
" 30		44 540.00				)		43 635.65	Rioco refining storage tanks, Hynes, Calif.
				500.00		500.00)			Service station at Franklin and Vermont, Los Angeles
" 30		500.00		35 421.75		35 421.75			Steel tanker Eskoskee
Dec 9		35 421.75							Steel tanker Larry Doheny
" 23		164 746.20)		142 242.86		68 258.15			Steel tanker Pat Doheny
" 23		168 663.06)							Richmond marine terminal, Contra Costa County, Calif.
" 23		190 914.94)					76 032.84 (red)		
" 24									
" 31		49 385.00							Rioco refinery storage tanks, Hynes, Calif.
1930									
Jan 3		500.00							Service station at Franklin and Vermont, Los Angeles
" 3		50 000.00							Delaney group producing properties
" 11		15 825.00							Richville camp site, Backus property, Long Beach, Calif.
" 20	200 000.00		466 764.36		466 764.36		336 646.20		
" 23							308 662.67		
" 24						500.00		500.00	Land, Sacramento distributing plant, Sacramento, Calif.
" 27		500.00		500.00					106,000 shares capital stock Universal Consolidated Oil Company, certificates LX 26, 27, 28, 52
" 29		221 202.08)		199 500.00		199 500.00		199 500.00	Delaney group producing properties
		)							
" 29		50 000.00)							Rioco refinery storage tanks, Hynes, Calif.
" 30		53 680.00			462 088.47				Service station at Franklin and Vermont, Los Angeles
" 30		500.00	464 148.47		443 916.47				
Feb 1			447 704.86		172 136.00 (red)		222 642.41 (red)		
" 15	500 000.00								
" 17	100 000.00 (red)				20 925.52		20 879.26		
" 24			296 779.62		122 941.84		128 412.10 (red)		
" 25	100 000.00		252 760.24		204 342.03		204 138.29		
" 26							272 948.76		
" 27	100 000.00			34 332.84		34 332.84		34 332.84	Watson refinery vapor recovery plant, Los Angeles County, Calif.
Mar 1		34 332.84							
" 1		48 000.00		48 000.00		48 000.00		48 000.00	Rioco refinery storage tanks, Hynes, Calif.
" 4							239 919.57		
" 5		10 625.00		10 625.00		10 625.00	203 185.63	10 625.00	5,100 shares capital stock Universal Consolidated Oil Company, certificate #LX 31
" 6							17 400.43		
" 8			209 201.80						
" 10					113 324.49				
" 12		50 000.00		50 000.00		50 000.00		17 400.43	Delaney group producing properties
" 18					53 259.91				
" 22		7 500.00		7 500.00		7 500.00			Service station at Franklin and Vermont, Los Angeles
" 25		34 332.43		34 332.43		34 332.43			Watson refinery vapor recovery plant, Los Angeles County, Calif.
" 28		50 000.00		50 000.00		11 427.48			Rioco refinery storage tanks, Hynes, Calif.
Apr 2		50 000.00		50 000.00					Delaney group producing properties
" 3		500.00		500.00					Service station at Franklin and Vermont, Los Angeles
" 7		4,500.00		4 500.00			8 520.06		Land, Sacramento distributing plant, Sacramento, Calif.
" 16									
" 21		34 332.43		12 369.37					Watson refinery vapor recovery plant, Los Angeles County, Calif.
" 26		50 000.00							Delaney group producing properties
" 28		50 000.00							Rioco refinery storage tanks, Hynes, Calif.

Continued

TABULATION SHOWING TAKINGS OF UNIVERSAL FUNDS BY RICHFIELD, ASSETS PURCHASED WITH COMMINGLED FUNDS, LOW BALANCES UNDER THREE THEORIES ADVANCED, AND AMOUNT TRACEABLE INTO EACH ASSET CLAIMED UNDER EACH THEORY, Continued

(1) Date	(2) Deposit of Universal Money in Richfield Account	(3) Amount Paid on Property Paid for from Commingled Fund	(4) Lowest Daily Closing Balances Between Takings of Universal Funds	(5) Liens Claimed for the Following Sums by Reason of Column 4	(6) Lowest Posted Balances Shown on Bank's Books During Any Day Between Takings of Universal Funds	(7) Liens Claimed for the Following Sums By Reason of Column 6	(8) Lowest Balance Ascertained by Deducting All Checks Cleared Each Day Without Crediting Deposits made During the Same Day	(9) Liens Claimed for the Following Sums by Reason of Column 8	
1930									Service station at Franklin and Vermont, Los Angeles
May 1		$500.00							400 shares capital stock Univ. Cons. Oil Co., cert. #LX 34
" 1		825.00							100 do LX 34
" 1		208.33							100 " LX 34
" 2		208.33							200 " LX 34
" 3		416.67							75 " LX 34
" 3		156.25							400 " LX 34
" 5		825.00	$140 878.03						20 " LX 34
" 6		41.67							20 " LX 34
" 8		41.67							50 " LX 34
" 9		104.17							Delaney group producing properties
" 9		500.00							50 shares capital stock Univ. Cons. Oil Co., cert. #LX 34
" 12		104.17							2,440 do LX 38
" 12		5 083.33							1,500 " LX 36
" 15		3 125.00							Land, Sacramento distributing plant, Sacramento, Calif.
" 19		1 600.00							2,100 shares capital stock Univ. Cons. Oil Co., cert. #LX 40
" 19		4 375.00							280 do LX 38
" 20		583.33							1,700 " LX 39
" 20		3 541.67							Land adjacent Rioco refinery, Hynes, Calif.
" 21		20 000.00							Watson refinery vapor recovery plant, Los Angeles County, Calif.
" 23		34 332.43							
" 26							$73 096.23 (red)		
" 27		2 083.33							1,000 shares capital stock Univ. Cons. Oil Co., cert. #L3020
" 27		16 781.25							3,055 do LX 42
" 28		7 172.92							3,443 " LX 43
Jun 2		500.00							Service station at Franklin and Vermont, Los Angeles
" 4		50 000.00							Delaney group producing properties
" 6	$75 000.00						114 164.03 (red)		
" 7			168 222.42						
" 18					$69 303.89				
" 21							122 078.81 (red)		
" 25		34 332.43		$34 332.43		$34 332.43			Watson refinery vapor recovery plant, Los Angeles County, Calif.
" 27					45 336.49				
" 28		55 700.19		40 667.57		34 971.46			Rioco refinery storage tanks, Hynes, Calif.
Jul 14							1 679 420.83 (red)		
" 15		34 332.43							Watson refinery vapor recovery plant, Los Angeles County, Calif.
" 17		50 000.00							Delaney group producing property
" 31		500.00							Service station at Franklin and Vermont, Los Angeles
	$1 625 000.00			$849 864.25		$664 241.54		$403 993.92	

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That the property into which said trust funds are traced, as set forth in the foregoing tabulation, are hereby identified and described as follows:

Parcel 1. Real property known as "Franklin and Vermont Service Station", in the City of Los Angeles. For description see Receiver's Exhibit "F", page 1.

Parcel 2. Leaseholds known as the Delaney Producing Property, Los Angeles County, California. For description see said Exhibit, page 28 et seq.

Parcels 3 and 4. Ten storage tanks, of which 5 are located on property known as the Hottenroth Property, adjoining the Rioco Refinery at Long Beach, Los Angeles County, California, and 5 are located on property known as the Hunstock Property, adjoining said Rioco Refinery. For description of said tanks and of the real property on which they are located, see said Exhibit, pages 2 and 3. It does not appear that the tanks are a part of the realty, and it is accordingly found that they are not. Parcels 3 and 4, therefore, comprise the 10 tanks, but not the realty.

Parcel 5. Real property known as the Mull Property, in Sacramento County, California. For description see said Exhibit, page 19.

Parcel 6. Vapor Recovery Plant, located on Parcel No. 3 of the Watson Refinery land in Los Angeles County, California. For description of the land on which this plant is located, see said Exhibit commencing at the bottom of page 23. It does not appear that this plant is a part of the realty, and it is accordingly found that it is not. Parcel 6, therefore, comprises the plant, but not the realty.

Parcel 7. 106,000 shares of the capital stock of Universal Consolidated Oil Company, represented by the fol-

lowing certificates, issued to Richfield Oil Company of California:

No. LX26, dated February 13, 1930	42,500 shares;
No. LX27, dated February 14, 1930	50,000 shares;
No. LX28, dated February 14, 1930	2,000 shares;
No. LX32, dated March 10, 1930	11,500 shares;

Parcel 8. 5100 shares of stock of the Universal Consolidated Oil Company, represented by the following certificate issued to Richfield Oil Company of California:

No. LX31, dated March 7, 1930.

Parcel 9. American Steel Tanker "Kekoskee", constructed by the Bethlehem Shipbuilding Corporation (Harlan Plant), Wilmington, Delaware, October, 1920; cargo capacity, 51,200 barrels; port of registration, Los Angeles.

Parcel 10. Real property known as Richmond Terminal and Marine Faciilties, situated in Contra Costa County, State of California. For description see said Receiver's Exhibit "F", pages 4 to 16, inclusive.

Also American Steel Tanker "Pat Doheny", constructed by Sun Shipbuilding Company, Chester, Pennsylvania, January, 1921; cargo capacity 80,000 barrels; port of registration, Los Angeles.

Also American Steel Tanker "Larry Doheny", constructed by the Sun Shipbuilding Company, Chester, Pennsylvania, May, 1921; cargo capacity 75,300 barrels; port of registration, Los Angeles, California.

The amount of trust funds belonging to intervenor and traced into the purchase of property acquired by Richfield Oil Company as above described, were as follows:

Parcel 1.	$ 8500.00
Parcel 2	150,000.00
Parcels 3 and 4	183,207.57
Parcel 5	5,000.00
Parcel 6	115,367.07
Parcel 7	199,500.00
Parcel 8	10,625.00
Parcel 9	35,421.75
Parcel 10	142,242,86
TOTAL	$849,864.25

AS TO CONCLUSIONS OF LAW

10. To so much of the Conclusions of Law of the Master as states that a trust be declared and enforced in favor of Universal Consolidated Oil Company (intervenor) in Parcel 1, described on page 83 of the Master's Report, in the sum of $492.60, or any sum less than $8,500.00, because under the law and evidence the said Universal Consolidated Oil Company is entitled to have a trust declared and enforced in its favor upon said property described in Parcel 1 in the sum of $8500.00.

11. To so much of the Conclusions of Law of the Master as states that a trust be declared and enforced in favor of Universal Consolidated Oil Company (intervenor) in Parcel 2, described on page 83 of the Master's Report, in the sum of $103,442.33, or any sum less than $150,000.00, because under the law and evidence, the said Universal Consolidated Oil Company is entitled to have a trust declared and enforced in its favor upon said property described in Parcel 2 in the sum of $150,000.00.

12. To so much of the Conclusions of Law of the Master as states that a trust be declared and enforced in

favor of Universal Consolidated Oil Company (intervenor) in Parcel 3 and Parcel 4, described on page 83 of the Master's report, in the sum of $91,881.85, or any sum less than $183,207.57, because under the law and evidence, the said Universal Consolidated Oil Company is entitled to have a trust declared and enforced in its favor upon said property described in Parcels 3 and 4 in the sum of $183,207.57.

13. To so much of the Conclusions of Law of the Master as states that a trust be declared and enforced in favor of Universal Consolidated Oil Company (intervenor) in Parcel 5, described on page 83 of the Master's Report, in the sum of $500.00, or any sum less than $5,000.00, because under the law and evidence, the said Universal Consolidated Oil Company is entitled to have a trust declared and enforced in its favor upon said property described in Parcel 5 in the sum of $5,000.00.

14. To so much of the Conclusions of Law of the Master as states that a trust be declared and enforced in favor of Universal Consolidated Oil Company (intervenor) in Parcel 6, described on page 83 of the Master's Report, in the sum of $34,332.84, or any sum less than $115,367.07, because under the law and evidence, the said Universal Consolidated Oil Company is entitled to have a trust declared and enforced in its favor upon said property described in Parcel 6 in the sum of $115,367.07.

15. To so much of the Conclusions of Law of the Master as states that a trust be declared and enforced in favor of Universal Consolidated Oil Company (intervenor) in Parcel 7, described on page 83 of the Master's Report, in the sum of $162,719.30, or any sum less than $199,500.00, because under the law and evidence, the said

Universal Consolidated Oil Company is entitled to have a trust declared and enforced in its favor upon said property described in Parcel 7 in the sum of $199,500.00.

16. To so much of the Conclusions of Law of the Master as states that a trust be declared and enforced in favor of Universal Consolidated Oil Company in the properties vested in the Richfield Oil Company and its Receiver, in the sum of $403,993.92, or any sum less than $849,864.25, because under the law and evidence the said Universal Consolidated Oil Company is entitled to have a trust declared and enforced in its favor upon the properties vested in the Richfield Oil Company and its Receiver in said sum of $849,864.25.

17. To the Conclusions of Law and Recommendation of the Master which fail to recommend that a trust be declared and enforced in favor of Universal Consolidated Oil Company upon,

(1) Tanker "Kekoskee", described on page 27 of the Receiver's Exhibit "F", in the sum of $35,421.75;

(2) Tankers "Pat Doheny" and "Larry Doheny" as described on page 27 of the Receiver's Exhibit "F"; and upon the Richmond Marine Terminal, being the real property described on pages 4, et seq., of said Receiver's Exhibit "F", in the sum and amount of $142,242.86.

Dated: June 14th, 1933.

A. L. WEIL
LE ROY M. EDWARDS
Attorneys for Claimant and Intervenor Universal Consolidated Oil Company."

Thereafter the exceptions to said Reports were heard and submitted to the United States District Court for the Southern District of California.

ORDERS AND DECREES OF THE UNITED STATES DISTRICT COURT.

On September 17, 1934 the United States District Court for the Southern District of California, Central Division, entered its order and decree approving and confirming the report of the Special Master filed May 26, 1932 set forth above, and approving and confirming the findings of the Special Master on the claim of Universal Consolidated Oil Company set forth above.

On September 26, 1934, United States District Court for the Southern District of California, Central Division, entered its order and decree approving and confirming the reports of said Special Master upon the claim and upon the bill in intervention of Universal Consolidated Oil Company set forth above, and overruled the exceptions filed by all parties to said Special Master's reports.

It is further agreed and stipulated that the above may constitute the agreed statement of the case to be used on Appeal No. 1, Appeal No. 2 and Appeal No. 3, and that this agreed statement of the case may be used in each of said appeals and that all of said appellants shall be heard thereon in the same manner as if said agreed statement of the case had been filed by the appellants in each case.

Dated this 15th day of March, 1935.

O'MELVENY, TULLER & MYERS,
900 Title Insurance Building,
Los Angeles, California

Clinton La Tourrette

Solicitors for Security-First National Bank of Los Angeles, a National Banking Association, as Trustee.

BAUER, MACDONALD, SCHULTHEIS & PETTIT

621 South Spring Street,
Los Angeles, California

Alexander Macdonald

Solicitors for Richfield Bondholders' Protective Committee.

CHANDLER, WRIGHT & WARD
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Leo S. Chandler

CALL & MURPHEY
514 Pacific Mutual Building
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Alex W. Davis

Solicitors for Unsecured Creditors Protective Committee—Richfield Oil Company of California.

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FRESTON & FILES,
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Clarence M. Hanson

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Clayton T. Cochran

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Homer D. Crotty

Solicitors for William C. McDuffie as Receiver for Pan American Petroleum Company.

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Mortimer A. Kline

Special Solicitor for William C. McDuffie as Receiver of Pan American Petroleum Company.

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Wm. J. De Martini

Solicitor for Richfield Oil Company of California, a corporation.

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Solicitors for United States of America.

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By Martin J. Weil

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BAUER, MACDONALD, SCHULTHEIS & PETTIT,

621 South Spring Street,
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CRAVATH, deGERSDORFF, SWAINE & WOOD,

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New York, New York

CHANDLER, WRIGHT & WARD,

631 Van Nuys Building,
Los Angeles, California

CALL & MURPHEY,

Pacific Mutual Building,
Los Angeles, California

Alexander Macdonald,

Colin C. Ives,

Alex W. Davis

Leo S. Chandler,

Solicitors for G. Parker Toms, Robert C. Adams, F. S. Baer, Robert E. Hunter, Henry S. McKee and Richard W. Millar (known and designated as Richfield-Pan American Reorganization Committee).

CALL & MURPHEY,

514 Pacific Mutual Building,
Los Angeles, California

Alex W. Davis

Solicitors for Security-First National Bank of Los Angeles, a national banking association, Pacific American Company, a corporation, American Company, a corporation, Manufacturers Trust Company of New

York, a corporation, Citizens National Trust & Savings Bank of Los Angeles, a national banking association, First National Bank and Trust Company of Seattle, a national banking association, Continental Illinois Bank and Trust Company, a corporation, The First National Bank of Chicago, a national banking association, Chemical National Bank and Trust Company, a national banking association, and California Bank, a corporation.

GIBSON, DUNN & CRUTCHER,
634 South Spring Street,
Los Angeles, California

Homer D. Crotty

Solicitors for William C. McDuffie, as Receiver of Richfield Oil Company of California, a corporation

Approved this 16th day of March, 1935; and ordered when filed in the office of the Clerk of this Court to supersede, for the purposes of the appeals herein, all parts of the record in these causes other than said orders and decrees appealed from; and further ordered to be copied, together with said orders and decrees, and certified to the United States Circuit Court of Appeals for the Ninth Circuit as the record on the appeal herein.

Wm. P. James
District Judge

[Endorsed]: Filed Mar 16 1935 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation,

Complainant,

vs.

RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation,

Defendant.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, as trustee,

Plaintiff,

vs.

RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, and WILLIAM McDUFFIE, as Receiver of Richfield Oil Company of California, a corporation,

Defendants.

UNIVERSAL CONSOLIDATED OIL COMPANY, a California corporation,

Intervenor.

IN EQUITY

CONSOLIDATED CAUSE NO. S-125-J.

PETITION FOR APPEAL.

TO THE HONORABLE WILLIAM P. JAMES, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

Security-First National Bank of Los Angeles, a national banking association, as trustee, plaintiff herein, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein referred to constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners herein, and each of them, petitioners herein, considering themselves aggrieved by that certain order, judgment and decree made and entered by the court in the above entitled cause on September 17, 1934, adjudicating each, all and sundry the exceptions filed to the Report of the Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which report was filed on May 26, 1933, do hereby appeal from said order, judgment and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reason specified in their assignment of errors, which is filed herewith, and pray that their appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order, judgment and decree were based and made, duly authenticated, may

be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco in said Circuit, and your petitioners further pray that the proper order touching the security to be required of petitioners to perfect their said appeal be made.

Dated at Los Angeles, California, this 17th day of December, 1934, in Open Court.

O'MELVENY, TULLER & MYERS,
LOUIS W. MYERS,
PIERCE WORKS,
BAUER, MACDONALD, SCHULTHEIS & PETTIT,
ALEXANDER MACDONALD,
A. STEVENS HALSTED, JR.

O'Melveny, Tuller & Myers,
Louis W. Myers,
Pierce Works,
Bauer, Macdonald, Schultheis & Pettit,
Alexander Macdonald,
A. Stevens Halsted, Jr.

Solicitors for Petitioners above named.

[Endorsed]: Filed Dec. 17, 1934. R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now come Security-First National Bank of Los Angeles, a national banking association, as trustee, plaintiff herein, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein referred to constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners herein, petitioners and appellants in the above entitled action, and having prayed for the allowance of their appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order, judgment and decree of the above entitled United States District Court entered in said cause on September 17, 1934, adjudicating each, all and sundry the exceptions filed to the Report of Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which report was filed on May 26, 1933, all as is more particularly set forth in the petition presented herewith, and respectfully represent and say that said order, judgment and decree is erroneous and unjust to said appellants, and each of them, in the following particulars, and respectfully present and file the following as the assignment of errors upon which they, and each of them, will rely in the prosecution of said appeal, to-wit:

1. The court erred in approving and confirming the Report of the Honorable William A. Bowen, Special Master in the above entitled cause, on the bill in interven-

tion of Universal Consolidated Oil Company, which report was filed in the office of the Clerk of the above entitled court on May 26, 1933.

2. The court erred in not sustaining and allowing each, all and sundry the exceptions filed in said cause to said report by Security-First National Bank of Los Angeles as trustee, petitioner herein.

3. The court erred in approving and confirming the finding of fact and/or conclusion of law in said report (Report p. 82, line 26) that the lien of the bond or trust indenture sought to be foreclosed herein is subject to the trust interest of Universal Consolidated Oil Company, intervenor, as found and declared by said Special Master as to the parcels of property specified in said Report.

4. The court erred in approving and confirming the finding of fact and/or conclusion of law in said Report (Report p. 76, line 24) that said intervenor had sufficiently identified and traced its funds into the various parcels specified in said Report and hereinafter specified either in the amounts therein set forth or otherwise.

5. The court erred in approving and confirming the finding of fact and/or conclusion of law in said Report (Report p. 57, line 13) that the various parcels specified in said Report and hereinafter specified either in toto or to the respective amounts or to the extent of the trust imposed upon this in favor of said intervenor, constitute the property of intervenor in a substituted form.

6. The court erred in approving and confirming the conclusion of law in said Report (Report p. 83, line 4) that said intervenor is entitled to have a trust imposed upon the various parcels specified in said Report and here-

inafter specified either in the amounts specified therein or in any amounts whatsoever.

7. The court erred in approving and confirming the conclusion of law in said Report (Report p. 76, line 24) that the evidence herein constitutes a sufficient tracing and identification of funds of said intervenor to warrant the imposition of a trust in favor of said intervenor upon the various parcels specified in said Report and hereinfter specified, either in the amounts set forth therein or in any amounts whatsoever.

8. The court erred in approving and confirming the conclusion of law in said Report (Report p. 67-a, line 6) that the investments revealed by the evidence (to-wit, the purchases by defendant Richfield Oil Company of California, a corporation, of the parcels specified in said Report and hereinafter specified) should be attributed either in whole or in part to the trust funds of intervenor then and there in the possession of said defendant and commingled with private funds belonging to said defendant.

9. The court erred in approving and confirming the conclusion of law in said Report (Report p. 67-a, line 6) that in the case of purchases of real or personal property made by a trustee out of a fund in which trust and private funds had theretofore been commingled, the trust moneys may be traced into such properties wholly through the application of presumptions and wholly without evidence of any actual devotion of such trust funds or any part

thereof as distinguished from the commingled funds to the respective purchases in question.

10. The court erred in not concluding that the evidence was insufficient to support a finding that intervenor had actually traced into the parcels specified in said Report and hereinafter specified any of the trust funds of intervenor formerly in the possession of defendant Richfield Oil Company of California, a corporation, as distinguished from the commingled fund in which said trust funds and the private funds of said defendant were blended.

11. The court erred in not concluding and declaring that mere proof of purchases out of a fund in which trust and private moneys have been commingled is wholly insufficient to warrant the imposition of a trust upon the property so purchased.

12. The court erred in approving and confirming the recommendations and each of them contained in said Report (p. 83, line 4) to-wit:

(a) That a trust be declared and enforced in favor of Universal Consolidated Oil Company, a corporation, in the amounts specified below and upon such right, title and interest as may appear to be vested in Richfield Oil Company of California, a corporation, and its receiver, and superior to any right, title, interest or lien of this plaintiff under the bond or trust indenture sought to be foreclosed herein in and to the following properties and parcels described in said report, to-wit:

Parcel 1:	"Franklin & Vermont Service Station", real property.	$ 492.60
Parcel 2:	"Delaney Producing Property", leaseholds.	103,442.33
Parcels 3 and 4	Ten storage tanks, personal property.	91,881.85
Parcel 5:	"Mull Property" real property.	500.00
Parcel 6:	"Vapor Recovery Plant," personal property.	34,332.84
Parcel 7:	106,000 shares of Universal Stock, Certs. LX:26, 27, 28 and 32	162,719.30
Parcel 8:	5,100 shares of Universal stock. Cert. LX 31	10,625.00
		$403,993.92

(b) That upon any sale to be had in this action the aforesaid parcels be offered for sale and sold separately from each other and from all other property, and that Universal Consolidated Oil Company be allowed a first charge upon the gross proceeds of the sale of each of said parcels in the amount above specified in respect thereof, the amount of each sale to be a charge upon any surplus realized from such sale over the amount receivable as aforesaid by said Universal Consolidated Oil Company, a corporation; and

(c) That jurisdiction be retained for the purpose of awarding such other relief as may appear to be equitable for the enforcement of said trust in the event there shall

be a failure to effect a sale in the case of any parcel or parcels.

13. The court erred in failing and declining to adjudicate, decide and determine that said intervenor is not entitled to have a trust imposed upon any of the parcels specified in said Report in any amount whatever.

WHEREFORE, petitioners and appellants and each of them pray that said order, judgment and decree may be reversed, and for such other and further relief as to the court may seem just and proper.

Dated this 17th day of December, 1934.

O'MELVENY, TULLER & MYERS,
LOUIS W. MYERS,
PIERCE WORKS,
BAUER, MACDONALD, SCHULTHEIS & PETTIT,
ALEXANDER MACDONALD,
A. STEVENS HALSTED, JR.,

O'Melveny, Tuller & Myers,
Louis W. Myers,
Pierce Works,
Bauer, Macdonald, Schultheis & Pettit,
Alexander MacDonald,
A. Stevens Halsted, Jr.,

Solicitors for Petitioners and Appellants above named.

[Endorsed]: Filed Dec. 17, 1934. R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

The petition of Security-First National Bank of Los Angeles, a national banking association, as trustee, plaintiff herein, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein referred to constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners herein; for an order allowing their appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain order, judgment and decree of this court made and entered in the above entitled cause on September 17, 1934, adjudicating each, all and sundry the exceptions filed to the Report of the Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which Report was filed on May 26, 1933, all as more particularly set forth in said petition, is hereby granted and such appeal is allowed as prayed for; and

IT IS FURTHER ORDERED that a certified transcript of the record, proceedings and papers upon which said order, judgment and decree was based, duly authen-

ticated, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco in said Circuit; and

IT IS FURTHER ORDERED that said petitioners furnish a bond for costs on appeal in the sum of $1000.00, with sufficient sureties, to be conditioned as required by law.

Done at Los Angeles, California, this 17 day of December, 1934, in Open Court.

Wm. P. James
UNITED STATES DISTRICT JUDGE.

[Endorsed]: Filed Dec. 17, 1934 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk.

[Title of Court and Cause.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, NATIONAL SURETY CORPORATION, a corporation organized and existing under the laws of the State of New York, and duly qualified to do and to transact a general surety business in the State of California, and as well in the Southern United States Judicial District of the State of California, acknowledges itself to be indebted to The Chase National Bank of the City of New York, a national banking association, Bank of America, a corporation, Pan American Petroleum Company, a corporation, William C. McDuffie, as Receiver of Richfield Oil Company of California, a corporation, William C. McDuffie, as Receiver of Pan American Petroleum pany, a corporation, Richfield Oil Company of California, a corporation, The United States of America, The Republic Supply Company of California, a corporation, Cities Service Company, a corporation, Universal Consolidated Oil Company, a corporation, M. W. Lowery, Henry S. McKee, O. C. Field and R. R. Templeton (known and designated as Richfield Unsecured Creditors' Committee), Robert C. Adams, Thomas B. Eastland, Edward F. Hayes and Richard W. Millar (known and designated as Pan American Bondholders' Committee), G. Parker Toms, Robert C. Adams, F. S. Baer, Robert E. Hunter, Henry S. McKee and Richard W. Millar (known and designated

as Richfield-Pan American Reorganization Committee), Security-First National Bank of Los Angeles, a national banking association, Pacific American Company, a corporation, American Company, a corporation, Manufacturers Trust Company of New York, a corporation, Citizens National Trust & Savings Bank of Los Angeles, a national banking association, First National Bank and Trust Company of Seattle, a national banking association, Continental Illinois Bank and Trust Company, a corporation, The First National Bank of Chicago, a national banking association, Chemical National Bank and Trust Company, a national banking association, and California Bank, a corporation, appellees in the above cause, jointly but not severally, in the sum of one thousand—($1,000.00) conditioned that:

WHEREAS, on September 17, 1934, in the above entitled action in the above entitled court said court made and entered its order, judgment and decree adjudicating each, all and sundry the exceptions filed to the Report of the Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which Report was filed on May 26, 1933, and the parties appellant hereinafter named, have been allowed leave to appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse said order, judgment and decree.

Now if said parties appellant, to-wit, Security-First National Bank of Los Angeles, a national banking asso-

ciation, as trustee, plaintiff herein, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein referred to constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners herein, shall prosecute their said appeal to effect and answer all costs, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

In no event shall liability or recovery on this bond exceed in the aggregate the sum of
Dollars ($1,000.00).

IN WITNESS WHEREOF, the said National Surety Corporation has caused its name to be hereunto subscribed and its corporate seal to be affixed by its attorney in fact thereunto duly authorized this 17th day of December, 1934.

[Seal] NATIONAL SURETY CORPORATION,

By Arden L. Day

Its Attorney in Fact.

The form of the foregoing bond and sufficiency of surety thereof are approved this 17 day of December, 1934.

Wm P James

United States District Judge.

STATE OF CALIFORNIA)
(SS.
COUNTY OF LOS ANGELES)

On this 17th day of December in the year one thousand nine hundred and 34 before me Frances T. Mixson, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Arden L. Day, known to me to be the duly authorized attorney-in-fact of NATIONAL SURETY CORPORATION, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Corporation, and the said Arden L. Day acknowledged to me that he subscribed the name of National Surety Corporation thereto as principal, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] Frances T. Mixson,
Notary Public in and for said county and state.

My Commission expires August 31, 1936.

[Endorsed]: Filed Dec. 17, 1934. R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation, Complainant, vs. RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, Defendant.	IN EQUITY CONSOLIDATED CAUSE NO. S-125-J
SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, as trustee, Plaintiff, vs. RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, and WILLIAM McDUFFIE, as Receiver of Richfield Oil Company of California, a corporation, Defendants.	PETITION FOR APPEAL (Order of September 26, 1934)

UNIVERSAL CONSOLIDATED)
OIL COMPANY, a California cor-)
poration,)
)
Intervenor.)
)

TO THE HONORABLE WILLIAM P. JAMES, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

Security-First National Bank of Los Angeles, a national banking association, as trustee, plaintiff herein, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners herein, and each of them, petitioners herein, considering themselves aggrieved by that certain order, judgment and decree made and entered by the court in the above entitled cause on September 26, 1934, adjudicating each, all and sundry the exceptions filed to the Report of the Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which report was filed on May 26,

1933, do hereby appeal from said order, judgment and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reason specified in their assignment of errors, which is filed herewith, and pray that their appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order, judgment and decree were based and made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco in said Circuit, and your petitioners further pray that the proper order touching the security to be required of petitioners to perfect their said appeal be made.

Dated at Los Angeles, California, this 26th day of December, 1934, in Open Court.

O'MELVENY, TULLER & MYERS,
LOUIS W. MYERS,
PIERCE WORKS,
BAUER, MACDONALD, SCHULTHEIS & PETTIT,
ALEXANDER MACDONALD,
A. STEVENS HALSTED, JR.

By Pierce Works

Solicitors for Petitioners above named.

[Endorsed]: Filed Dec. 26, 1934. R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS
(Order of September 26, 1934)

Now come Security-First National Bank of Los Angeles, a national banking association, as trustee, plaintiff herein, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners herein, petitioners and appellants in the above entitled action, and having prayed for the allowance of their appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order, judgment and decree of the above entitled United States District Court entered in said cause on September 26, 1934, adjudicating each, all and sundry the exceptions filed to the Report of Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which report was filed on May 26, 1933, all as is more particularly set forth in the petition presented herewith, and respectfully represent and say that said order, judgment and decree is erroneous and unjust to said appellants, and each of them, in the following particulars, and respectfully present and file the following as the assignment of errors upon which they, and each of them, will rely in the prosecution of said appeal, to-wit:

1. The court erred in giving and rendering its order or decree of September 26, 1934 in the above entitled suit which order approved and confirmed the Report of William A. Bowen, Special Master, filed in the office of the clerk of the above entitled court on May 26, 1933, on the bill in intervention of Universal Consolidated Oil Company and overruled exceptions to said Report.

2. The court erred in not sustaining and allowing each, all and sundry the exceptions filed in said cause to said report by Security-First National Bank of Los Angeles as trustee, petitioner herein.

3. The court erred in approving and confirming the finding of fact and/or conclusion of law in said report (Report p. 82, line 26) that the lien of the bond or trust indenture sought to be foreclosed herein is subject to the trust interest of Universal Consolidated Oil Company, intervenor, as found and declared by said Special Master as to the parcels of property specified in said Report.

4. The court erred in approving and confirming the finding of fact and/or conclusion of law in said Report (Report p. 76, line 24) that said intervenor had sufficiently identified and traced its funds into the various parcels specified in said Report and hereinafter specified either in the amounts therein set forth or otherwise.

5. The court erred in approving and confirming the finding of fact and/or conclusion of law in said Report (Report p. 57, line 13) that the various parcels specified in said Report and hereinafter specified either in toto or in the respective amounts or to the extent of the trust imposed upon this in favor of said intervenor, constitute the property of intervenor in a substituted form.

6. The court erred in approving and confirming the conclusion of law in said Report (Report p. 83, line 4) that said intervenor is entitled to have a trust imposed upon the various parcels specified in said Report and hereinafter specified either in the amounts specified therein or in any amounts whatsoever.

7. The court erred in approving and confirming the conclusion of law in said Report (Report p. 76, line 24) that the evidence herein constitutes a sufficient tracing and identification of funds of said intervenor to warrant the imposition of a trust in favor of said intervenor upon the various parcels specified in said Report and hereinafter specified, either in the amounts set forth therein or in any amounts whatsoever.

8. The court erred in approving and confirming the conclusion of law in said Report (Report p. 67-a, line 6) that the investments revealed by the evidence (to-wit, the purchases by defendant Richfield Oil Company of California, a corporation, of the parcels specified in said Report and hereinafter specified) should be attributed either in whole or in part to the trust funds of intervenor then and there in the possession of said defendant and commingled with private funds belonging to said defendant.

9. The court erred in approving and confirming the conclusion of law in said Report (Report p. 67-a, line 6) that in the case of purchases of real or personal property made by a trustee out of a fund in which trust and private funds had theretofore been commingled, the trust moneys may be traced into such properties wholly through the application of presumptions and wholly without evidence of any actual devotion of such trust funds or any part thereof

as distinguished from the commingled funds to the respective purchases in question.

10. The court erred in not concluding that the evidence was insufficient to support a finding that intervenor had actually traced into the parcels specified in said Report and hereinafter specified any of the trust funds of intervenor formerly in the possession of defendant Richfield Oil Company of California, a corporation, as distinguished from the commingled fund in which said trust funds and the private funds of said defendant were blended.

11. The court erred in not concluding and declaring that mere proof of purchases out of a fund in which trust and private moneys have been commingled is wholly insufficient to warrant the imposition of a trust upon the property so purchased.

12. The court erred in approving and confirming the recommendations and each of them contained in said Report (p. 83, line 4) to-wit:

(a) That a trust be declared and enforced in favor of Universal Consolidated Oil Company, a corporation, in the amounts specified below and upon such right, title and interest as may appear to be vested in Richfield Oil Company of California, a corporation, and its receiver, and superior to any right, title, interest or lien of this plaintiff under the bond or trust indenture sought to be foreclosed herein in and to the following properties and parcels described in said Report, to-wit:

Parcel 1:	"Franklin & Vermont Service Station". real property.	$ 492.60
Parcel 2:	"Delaney Producing Property", leaseholds.	103,442.33
Parcels 3 and 4:	Ten storage tanks, personal property.	91,881.85
Parcel 5:	"Mull Property" real property.	500.00
Parcel 6:	"Vapor Recovery Plant," personal property.	34,332.84
Parcel 7:	106,000 shares of Universal Stock, Certs. LX:26, 27, 28 and 32.	162,719.30
Parcel 8:	5,100 shares of Universal stock, Cert. LX 31.	10,625.00
		$403,993.92

(b) That upon any sale to be had in this action the aforesaid parcels be offered for sale and sold separately from each other and from all other property, and that Universal Consolidated Oil Company be allowed a first charge upon the gross proceeds of the sale of each of said parcels in the amount above specified in respect thereof, the amount of each sale to be a charge upon any surplus realized from such sale over the amount receivable as aforesaid by said Universal Consolidated Oil Company, a corporation; and

(c) That jurisdiction be retained for the purpose of awarding such other relief as may appear to be equitable for the enforcement of said trust in the event there shall be a failure to effect a sale in the case of any parcel or parcels.

13. The court erred in failing and declining to adjudicate, decide and determine that said intervenor is not entitled to have a trust imposed upon any of the parcels specified in said Report in any amount whatever.

WHEREFORE, petitioners and appellants and each of them pray that said order, judgment and decree may be reversed, and for such other and further relief as to the court may seem just and proper.

Dated this 26th day of December, 1934.

O'MELVENY, TULLER & MYERS,
LOUIS W. MYERS,
PIERCE WORKS,
BAUER, MACDONALD, SCHULTHEIS & PETTIT,
ALEXANDER MACDONALD,
A. STEVENS HALSTED, JR.

By Pierce Works

Solicitors for Petitioners and Appellants above named.

[Endorsed]: Filed Dec. 26, 1934. R. S. Zimmerman Clerk By Edmund L. Smith, Deputy Clerk

[Title of Court and Cause.]

ORDER ALLOWING APPEAL

(Order of September 26, 1934)

The petition of Security-First National Bank of Los Angeles, a national banking association, as trustee, plaintiff herein, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners herein, for an order allowing their appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain order, judgment and decree of this court made and entered in the above entitled cause on September 26, 1934, adjudicating each, all and sundry the exceptions filed to the Report of the Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which Report was filed on May 26, 1933, all as more particularly set forth in said petition, is hereby granted and such appeal is allowed as prayed for; and

IT IS FURTHER ORDERED that a certified transcript of the record, proceedings and papers upon which said order, judgment and decree was based, duly authenticated, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco in said Circuit; and

IT IS FURTHER ORDERED that said petitioners furnish a bond for costs on appeal in the sum of $500— with sufficient sureties, to be conditioned as required by law.

Done at Los Angeles, California, this 26th day of December, 1934, in Open Court.

Wm P. James
United States District Judge.

[Endorsed]: Filed Dec. 26, 1934. R. S. Zimmerman Clerk By Edmund L. Smith, Deputy Clerk.

[Title of Court and Cause.]

BOND ON APPEAL

(Order of September 26, 1934)

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, NATIONAL SURETY CORPORATION, a corporation organized and existing under the laws of the State of New York, and duly qualified to do and to transact a general surety business in the State of California, and as well in the Southern United States Judicial District of the State of California, acknowledges itself to be indebted to The Chase National Bank of the City of New York, a national banking association, Bank of America, a corporation, Pan American Petroleum Company, a corporation, William C. McDuffie, as Receiver of Richfield Oil Company of California, a corporation, William C. McDuffie, as Receiver of Pan American Petroleum Company, a corporation, Richfield Oil Company of California, a corporation, The United States of America, The Republic Supply Company of California, a corporation, Cities Service Company, a corporation, Universal Consolidated Oil Company, a corporation, M. W. Lowery, Henry S. McKee, O. C. Field and R. R. Templeton (known and designated as Richfield Unsecured Creditors' Committee), Robert C. Adams, Thomas B. Eastland, Edward F. Hayes and Richard W. Millar (known and designated as Pan American Bondholders' Committee), G. Parker Toms, Robert C. Adams, F. S. Baer, Robert E. Hunter, Henry S. McKee and Richard W. Millar (known and designated as Richfield-Pan American Reorganization Committee), Security-First National Bank of Los Angeles, a

national banking association, Pacific American Company, a corporation, American Company, a corporation, Manufacturers Trust Company of New York, a corporation, Citizens National Trust & Savings Bank of Los Angeles, a national banking association, First National Bank and Trust Company of Seattle, a national banking association, Continental Illinois Bank and Trust Company, a corporation, The First National Bank of Chicago, a national banking association, Chemical National Bank and Trust Company, a national banking association, and California Bank, a corporation, appellees in the above cause, jointly but not severally, in the sum of five hundred dollars ($500.00) conditioned that:

WHEREAS, on September 26, 1934, in the above entitled action in the above entitled court said court made and entered its order, judgment and decree adjudicating each, all and sundry the exceptions filed to the Report of the Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which Report was filed on May 26, 1933, and the parties appellant hereinafter named, have been allowed leave to appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse said order, judgment and decree.

Now if said parties appellant, to-wit, Security-First National Bank of Los Angeles, a national banking association, as trustee, plaintiff herein, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter

and Albert E. Van Court constituting the Richfield Bondholders' Committee, a committee formerly and at the time of the filing of the claim of Richfield Bondholders' Committee herein constituted of Nion R. Tucker, George Armsby, Stanton Griffis, Robert E. Hunter and Harry J. Bauer, interveners herein, shall prosecute their said appeal to effect and answer all costs, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

In no event shall liability or recovery on this bond exceed in the aggregate the sum of five hundred dollars ($500.00).

IN WITNESS WHEREOF, the said National Surety Corporation has caused its name to be hereunto subscribed and its corporate seal to be affixed by its attorney in fact thereunto duly authorized this 26th day of December, 1934.

[Seal] NATIONAL SURETY CORPORATION,

By Chas. Seyler, Jr.

Its Attorney in Fact.

The form of the foregoing bond and sufficiency of surety thereof are approved this 26th day of December, 1934.

Wm P. James

United States District Judge.

State of California)
County of Los Angeles) ss.

On this 26th day of December in the year one thousand nine hundred and 34, before me Francis T. Mixson, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Chas. Seyler, Jr. known to me to be the duly authorized Attorney in Fact of NATIONAL SURETY CORPORATION, and the same person whose name is subscribed to the within instrument as the Attorney in Fact of said Corporation and the said Chas. Seyler Jr. acknowledged to me that he subscribed the name of NATIONAL SURETY CORPORATION thereto as principal and his own name as Attorney in Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] Francis T. Mixson

Notary Public in and for said County and State.

My Commission Expires August 31, 1936

[Endorsed]: Filed Dec. 26, 1934. R. S. Zimmerman Clerk By Edmund L. Smith, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

THE REPUBLIC SUPPLY COMPANY OF CALIFORNIA, a corporation, Complainant, vs. RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, Defendant.	
SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a national banking association, as trustee, Plaintiff, RICHFIELD OIL COMPANY OF CALIFORNIA, a corporation, and WILLIAM McDUFFIE, as Receiver of Richfield Oil Company of California, a corporation, Defendants.	IN EQUITY CONSOLIDATED CAUSE NO. S-125-J. PETITION FOR APPEAL.

UNIVERSAL CONSOLIDATED)
OIL COMPANY, a California cor-)
poration,)
Intervenor.)
)

TO THE HONORABLE WILLIAM P. JAMES, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

Universal Consolidated Oil Company, a corporation, intervenor herein, petitioner herein, considering itself aggrieved by that certain order, judgment and decree made and entered by the court in the above entitled cause on September 26, 1934, adjudicating each, all and sundry the exceptions filed to the Report of the Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which report was filed on May 26, 1933, does hereby appeal from said order, judgment and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reason specified in its assignment of errors, which is filed herewith, and pray that its appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order, judgment and decree were based and made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco in said Circuit, and your petitioners further pray that the proper order

touching the security to be required of petitioners to perfect their said appeal be made.

Dated at Los Angeles, California, this 26th day of December, 1934, in Open Court.

A. L. Weil
Le Roy M. Edwards
Solicitors for Petitioner above named.
810 So Flower St Los Angeles

It is ordered, on motion of Appellant, that the foregoing appeal be, and it is hereby allowed as prayed for, Cost Bond to be given by Appellant in the sum of $1000.

Dated December 26, 1934.

Wm P. James
Judge of the above entitled court.

[Endorsed]: Filed Dec. 26, 1934. R. S. Zimmerman, Clerk By L. Wayne Thomas, Deputy Clerk.

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS

Now come Universal Consolidated Oil Company, a California corporation, intervenor herein, petitioner and appellant in the above entitled action, and having prayed for the allowance of their appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order, judgment and decree of the above entitled United States District Court entered in said cause on September 26, 1934, adjudicating each, all and sundry the exceptions filed to the Report of Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which report was filed on May 26, 1933, all as is more particularly set forth in the petition presented herewith, and respectfully represent and say that said order, judgment and decree is erroneous and unjust to said appellant in the following particulars, and respectfully present and file the following as the assignment of errors upon which it will rely in the prosecution of said appeal, to-wit:

1. The court erred in approving and confirming the Report of the Honorable William A. Bowen, Special Master in the above entitled cause, on the bill in intervention of Universal Consolidated Oil Company, which report was filed in the office of the Clerk of the above entitled court on May 26, 1933.

2. The court erred in approving and confirming the finding of fact and/or conclusions of law in said Report (Report p. 39, 40; also p. 83, line 4) that the prior lien of the Universal Consolidated Oil Company, intervenor, was

in the sum of $403,993.92, or any sum less than $1,183,148.28.

3. The court erred in approving and confirming the finding of fact and/or conclusions of law in said Report (Report p. 78, line 4) that no interest should be allowed Universal Consolidated Oil Company upon its claim.

4. The court erred in approving and confirming the finding of fact and/or conclusions of law in said Report (Report p. 83, line 4) that said intervenor was entitled to have a lien and trust imposed upon the following described properties, in the following amounts, which said properties are described in said Report, to-wit:

Parcel 1, "Franklin and Vermont Service Station" real property	$ 492.60
Parcel 2, "Delaney Producing Properties", leaseholds	103,442.33
Parcels 3 & 4, Ten Storage tanks, Personal property	91,881.85
Parcel 5, "Mull Property". Real Property	500.00
Parcel 6, "Vapor Recovery Plant". Personal Property	34,332.84
Parcel 7, One Hundred Six Thousand (106,000) shares of Universal Stock, Certificates Nos. LX 26, 27, 28 & 32	162,719.30
Parcel 8, Five Thousand One Hundred (5,100) shares of Universal Stock, Certificates No. LX 31	10,625.00
TOTAL	$403,993.92

5. That the court erred in approving and confirming the finding of fact and/or conclusion of law in said Report (Report p. 83, line 4) which failed to give, declare and enforce in favor of intervenor, Universal Consolidated Oil Company, a trust in the amounts specified below, and upon such right, title and interest as may appear to be vested in Richfield Oil Company of California, a corporation, and its receiver superior to any right, title, interest or lien of Security-First National Bank of Los Angeles, as trustee, under the bond or trust indenture sought to be foreclosed herein, in and to the following properties and parcels described in said Report, to-wit:

Parcel 1, "Franklin and Vermont Service Station" real property	$ 8,500.00
Parcel 2, "Delaney Producing Properties", leaseholds	150,000.00
Parcels 3 & 4, Ten storage tanks, personal Property	$183,207.57
Parcel 5, "Mull Property". Real Property	5,000.00
Parcel 6, "Vapor Recovery Plant". Personal Property	115,367.07
Parcel 7, One Hundred Six Thousand (106,-000) shares of Universal Stock, Certificates LX 26, 27, 28 & 32	199,500.00
Parcel 8, Five Thousand One Hundred (5,100) shares of Universal Stock, Certificate LX 31	10,625.00
Parcel 9, Tankers. Larry Doheney and Pat Doheney & Richfield Marine Terminal	142,242.86
TOTAL	$849,864.25

6. The court erred in approving and confirming the finding of facts and/or conclusion of law in said Report (Report p. 39, line 16 et seq.) limiting the recovery of intervenor to the low bank balance theory, as set forth in the Master's Report.

7. The court erred in approving and confirming the finding of fact and/or conclusion of law in said Report (Report p. 37, line 8) which denied to intervenor the right to consider the closing bank balance in the bank account of the Richfield Oil Company in establishing the amount of Richfield Oil Company's bank balance each day in connection with the tracing of the withdrawal of funds.

8. The court erred in approving and confirming the finding of fact and/or conclusion of law in said Report (Report p. 37, line 17 et seq.) which failed to hold and determine that intervenor was entitled to a prior lien on all properties acquired in whole or in part with commingled funds limited by the low bank balance of that commingled fund, which balance should be determined as being the bank balance existing at the end of each business day.

9. The court erred in approving and confirming the finding of fact and/or conclusion of law in said Report (Report p. 38, line 4) that in the tracing of trust funds the intervenor was limited to the low bank balances in the bank account of the Richfield Oil Company, resulting from the deduction of withdrawals for the day from the opening balance without crediting deposits for the day.

10. The court erred in not concluding and declaring that intervenor was entitled to a prior lien on all prop-

erties acquired by Richfield Oil Company in whole or in part with commingled funds, limited only by the low bank balance of said Richfield Oil Company on the closing of the bank at the end of each business day.

11. The court erred in approving and confirming the finding of fact and/or conclusion of law in said Report (Report p. 39, 40) that intervenor was limited in its recovery by the bank balances computed in accordance with the low bank balance at the beginning of each business day less all withdrawals from said bank account during said day, and without giving credit for deposits made during the day, all as set forth in the computations on pages 39 et seq. of said Master's Report.

12. The court erred in failing and declining to adjudicate, decide and determine that said intervenor is entitled to have a trust imposed upon the following parcels of property described in said Master's Report in the following amounts, to-wit:

Parcel 1.	"Franklin & Vermont Service Station".	$ 8,500.00
Parcel 2.	"Delaney Producing Property".	150,000.00
Parcels 3 & 4.	Ten Storage Tanks	183,207.57
Parcel 5.	"Mull Property".	5,000.00
Parcel 6.	"Vapar Recovery Plant".	115,367.07
Parcel 7.	One Hundred Six Thousand (106,000) shares Universal Stock. Certificate LX 26, 27, 28 & 32	199,500.00

Parcel 8.	Five Thousand One Hundred (5,100) shares Universal Stock. Certificate LX 31	10,625.00
Parcel 9.	Tanker Larry Doheny) Tanker Pat Doheny) Richmond Marine Terminal)	142,242.86
	TOTAL	$849,864.25

13. The court erred in approving and confirming the finding of fact and/or conclusion of law in said Special Master's Report (Report p. 83, line 4) which holds that no reclamation, lien or other preference can be allowed intervenor on $779,154.31 of its claim, and that as to said amount the claim of intervenor must be allowed only as an unsecured claim.

WHEREFORE, petitioner and appellant pray that such order, judgment and decree may be reversed, and for such other and further relief as the court may seem just and proper.

DATED this 26th day of December, 1934.

A. L. Weil
Le Roy M. Edwards

Attorneys for Petitioner and Appellant above named.

[Endorsed]: Filed Dec. 26, 1934 R. S. Zimmerman Clerk By L. Wayne Thomas, Deputy Clerk

[Title of Court and Cause.]

BOND ON APPEAL

(Order of September 26, 1934).

KNOW ALL MEN BY THE PRESENTS:

That the undersigned, HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation organized and existing under the laws of the State of Connecticut, and duly qualified to do and to transact a general surety business in the State of California, and as well in the Southern United States Judicial District of the State of California, acknowledges itself to be indebted to the Security-First National Bank of Los Angeles, a corporation, The Chase National Bank of the City of New York, a national banking association, Bank of America, a corporation, Pan American Petroleum Company, a corporation, William C. McDuffie, as Receiver of Richfield Oil Company of California, a corporation, William C. McDuffie, as Receiver of Pan American Petroleum Company, a corporation, Richfield Oil Company of California, a corporation, The United States of America, The Republic Supply Company of California, a corporation, Cities Service Company, a corporation, M. W. Lowery, Henry S. McKee, O. C. Field and R. R. Templeton, (known and designated as Richfield Unsecured Creditors' Committee), Robert C. Adams, Thomas B. Eastland, Edward F. Hayes and Rich-

ard W. Millar (known and designated as Pan American Bondholders' Committee), G. Parker Toms, Robert C. Adams, F. S. Baer, Robert E. Hunter, Henry S. McKee and Richard W. Millar (known and designated as Richfield-Pan American Reorganization Committee), Security-First National Bank of Los Angeles, a national banking association, Pacific American Company, a corporation, American Company, a corporation, Manufacturers Trust Company of New York, a corporation, Citizens National Trust & Savings Bank of Los Angeles, a national banking association, First National Bank and Trust Company of Seattle, a national banking association, Continental Illinois Bank and Trust Company, a corporation, The First National Bank of Chicago, a national banking association, Chemical National Bank and Trust Company, a national banking association, and California Bank, a corporation, appellees in the above cause, jointly but not severally, in the sum of One Thousand and no/100 dollars ($1000.00), conditioned that:

WHEREAS, on September 26, 1934, in the above entitled action in the above entitled court said court made and entered its order, judgment and decree adjudicating each, all and sundry the exceptions filed to the Report of the Honorable William A. Bowen, Special Master in said cause, with reference to the bill in intervention of Universal Consolidated Oil Company, which Report was filed on May 26, 1933, and the party appellant hereinafter named, has been allowed leave to appeal to the United

States Circuit Court of Appeals for the Ninth Circuit to reverse said order, judgment and decree.

Now if said party appellant, to-wit: Universal Consolidated Oil Company, a corporation, intervenor herein, shall prosecute its said appeal to effect and answer all costs, if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

In no event shall liability or recovery on this bond exceed in the aggregate the sum of One Thousand and no/100 dollars ($1000.00).

IN WITNESS WHEREOF, the said..... has caused its name to be hereunto subscribed and its corporate seal to be affixed by its attorney in fact thereunto duly authorized this 26th day of December, 1934.

[Seal] HARTFORD ACCIDENT AND INDEMNITY COMPANY

By Dick W. Graves
Attorney in Fact.

Approved Dec. 26, 1934

Wm P. James
District Judge.

STATE OF CALIFORNIA,)
County of Los Angeles,) ss.

On this 26th day of December, 1934, before me, OPAL GRAVES, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared DICK W. GRAVES, known to me to be the Attorney-in-Fact, of the HARTFORD ACCIDENT AND INDEMNITY COMPANY, the Corporation that executed the within instrument, and acknowledged to me that he subscribed the name of the HARTFORD ACCIDENT AND INDEMNITY COMPANY thereto and his own name as Attorney-in-Fact.

[Seal] Opal Graves

Notary Public, in and for the County of Los Angeles State of California

My Commission Expires June 18, 1938

[Endorsed]: Filed Dec. 26, 1934 R. S. Zimmerman, Clerk By L. Wayne Thomas, Deputy Clerk.

[Title of Court and Cause.]

STIPULATION AS TO CONTENTS OF TRANSCRIPT OF RECORD UPON APPEALS FROM ORDERS DATED SEPTEMBER 17, 1934 AND SEPTEMBER 26, 1934.

WHEREAS, Security-First National Bank of Los Angeles, a national banking association, as Trustee, George Armsby, F. S. Baer, Harry J. Bauer, Stanton Griffis, Robert E. Hunter and Albert E. Van Court, as and constituting the Richfield Bondholders' Committee, have appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the order and decree of the above entitled court made and entered September 17, 1934 (designated herein for convenience as "Appeal No. 1"); and have also appealed to said court from the order and decree made and entered September 26, 1934 (designated herein for convenience as "Appeal No. 2"); and

WHEREAS, Universal Consolidated Oil Company has appealed to said United States Circuit Court of Appeals from said order and decree made and entered September 26, 1934 (designated herein for convenience as "Appeal No. 3"); and

WHEREAS, said appellants in said appeals desire to consolidate the transcripts of the records in each of said appeals,

Now therefore IT IS HEREBY STIPULATED and AGREED by and between the undersigned solicitors for

appellants and appellees in the above mentioned appeals that a consolidated transcript of the record be prepared by the Clerk of the above entitled court and filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to the above mentioned appeals heretofore allowed herein, which consolidated transcript shall include the following pleadings, papers, exhibits and records and shall omit all other pleadings, papers, exhibits and records, to-wit:

1. Order of the Court dated September 17, 1934, approving and confirming the report of Special Master filed May 26, 1932;

2. Minute Entry of Order of Court of December 17, 1934, showing motion of Security-First National Bank of Los Angeles as Trustee, et al, appellants, for leave to appeal from Order mentioned in Item 1, supra;

3. Petition for Appeal in Appeal No. 1 from Order mentioned in Item 1, supra;

4. Assignment of Errors in Appeal No. 1 from Order mentioned in Item 1, supra;

5. Order allowing appeal in Appeal No. 1 from Order mentioned in Item 1, supra;

6. Bond on Appeal in Appeal No. 1 from Order mentioned in Item 1, supra;

7. Citation on Appeal in Appeal No. 1 from Order mentioned in Item 1, supra;

8. Return of Admission of Service in Appeal No. 1 of citation mentioned in Item 7, supra;

9. Order of the Court dated September 26, 1934, approving and confirming the reports of Special Master, filed May 26, 1933, upon the claim of Universal Consolidated Oil Company, and upon the bill in intervention filed by it;

10. Minute Entry of Order of Court of December 26, 1934, showing motion of Security-First National Bank of Los Angeles, as Trustee, et al, appellants, for leave to appeal from order mentioned in Item 9, supra;

11. Petition for Appeal in Appeal No. 2 from Order mentioned in Item 9, supra;

12. Assignment of Errors in Appeal No. 2 from Order mentioned in Item 9, supra;

13. Order allowing appeal in Appeal No. 2 from Order mentioned in Item 9, supra;

14. Bond on Appeal in Appeal No. 2 from Order mentioned in Item 9, supra;

15. Citation on Appeal in Appeal No. 2 from Order mentioned in Item 9, supra;

16. Return of Admission of Service in Appeal No. 2 of citation mentioned in Item 15, supra;

17. Petition for Appeal in Appeal No. 3 from Order mentioned in Item 9, supra;

18. Assignment of Errors in Appeal No. 3 from Order mentioned in Item 9, supra;

19. Order allowing appeal in Appeal No. 3 from Order mentioned in Item 9, supra;

20. Bond on Appeal in Appeal No. 3 from Order mentioned in Item 9, supra;

21. Citation on Appeal in Appeal No. 3 from Order mentioned in Item 9, supra;

22. Return of Admission of Service in Appeal No. 3 of citation mentioned in Item 2, supra;

23. Agreed statement of the case executed by the parties hereto and approved by the Court and now on file;

24. Copy of this Stipulation;

25. Certificate of the Clerk of the United States District Court for the Southern District, certifying to Transcript prepared by him in accordance with this Stipulation.

The parties stipulate by and through their Solicitors that if it be found by the Solicitors for any of the parties hereto, or by the Circuit Court of Appeals for the Ninth Circuit that this transcript of the record is insufficient for any reason, then a further supplemental transcript may be made upon due notice being given.

Dated this 15th day of March, 1935.

O'MELVENY, TULLER & MYERS,
900 Title Insurance Building,
Los Angeles, California
Clinton La Tourrette

Solicitors for Security-First National Bank of Los Angeles, a National Banking Association, as Trustee.

BAUER, MACDONALD, SCHULTHEIS & PETTIT

621 South Spring Street,
Los Angeles, California

Alexander Macdonald

Solicitors for Richfield Bondholders' Protective Committee.

CHANDLER, WRIGHT & WARD
631 Van Nuys Building,
Los Angeles, California

Leo S. Chandler

CALL & MURPHEY
514 Pacific Mutual Building
Los Angeles, California

By Alex W. Davis

Solicitors for Unsecured Creditors Protective Committee—Richfield Oil Company of California.

MUDGE, STERN, WILLIAMS & TUCKER,
20 Pine Street,
New York, New York

FRESTON & FILES,
650 South Spring Street,
Los Angeles, California

Clarence M. Hanson

Solicitors for The Chase National Bank of the City of New York.

MUDGE, STERN, WILLIAMS &
TUCKER,
20 Pine Street,
New York, New York.

FRESTON & FILES,
650 South Spring Street,
Los Angeles, California

Clarence M. Hanson

Solicitors for Bank of America, a corporation.

CLAYTON T. COCHRAN,
741 Richfield Building,
Los Angeles, California

Clayton T. Cochran

Solicitor for Pan American Petroleum Company a corporation.

GIBSON, DUNN & CRUTCHER,
634 South Spring Street,
Los Angeles, California

Homer D. Crotty

Solicitors for William C. McDuffie as Receiver for Pan American Petroleum Company.

MORTIMER A. KLINE,
Union Oil Building,
Los Angeles, California

Mortimer A. Kline

Special Solicitor for William C. McDuffie as Receiver of Pan American Petroleum Company.

WILLIAM J. De MARTINI,
306 Richfield Building,
Los Angeles, California

Wm. J. De Martini

Solicitor for Richfield Oil Company of California, a corporation.

ATLEE POMERENE,
H. J. CRAWFORD,
FRANK HARRISON,

Special Assistants to the Attorney General of the United States.

Union Trust Building,
Cleveland, Ohio

PEIRSON M. HALL,
United States Attorney.
508 Federal Building,
Los Angeles, California

JOHN R. LAYNG,
Special Assistant United States Attorney.
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[Endorsed]: Filed Mar 16 1935 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 285 pages, numbered from 1 to 285 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation on appeal and return of service from order of September 17, 1934; citation and return of service from order of September 26, 1934; citation on cross-appeal and return of service from order of September 26, 1934; order dated September 17, 1934; minute entry of December 17, 1934; order of September 26, 1934; minute entry of December 26, 1934; agreed statement of the case; petition for appeal, assignment of errors, order allowing appeal and bond on appeal from order of September 17, 1934; petition for appeal, assignment of errors, order allowing appeal and bond on appeal from order of September 26, 1934; petition on cross-appeal and order allowing same; assignment of errors on cross-appeal; bond on cross-appeal tnd stipulation as to contents of transcript of record.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is $ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to.....

and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of March, in the year of Our Lord One Thousand Nine Hundred and Thirty-five and of our Independence the One Hundred and Fifty-ninth.

R. S. ZIMMERMAN,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By

Deputy.